

YOUR LEGAL RIGHTS

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A LAYMAN'S HANDBOOK OF LAW

BY

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To Esther—who helped make this book possible.

Foreword

LAW IS A VAST and complex subject. Not only are there forty-eight states, each with their different laws, but there is, in addition, a body of federal legislation which, in size and scope, is equally formidable. And to make matters even more bewildering there are the reported decisions, embodying the common law, running into the tens of thousands of volumes. All this tends to create confusion and uncertainty. The courts, especially the appellate courts, are sufficient proof of this. A case, for example, may be won before a lower court and yet reversed on appeal because of a difference of opinion as to what the law is. Where the law is in conflict on a certain point, in this book I have given the decision sustained by the weight of judicial authority. In this I have been guided by such leading legal texts as Brantly on *Contracts*, Schouler on *Personal Property*, Vance on *Insurance* and Richards on *Insurance*, Clark and Marshall on *Criminal Law*, Meechem on *Partnership*, Ballantine on *Corporations*, Bishop on *Marriage and Divorce*, *Legal Grounds for Divorce*, published by the Research Department of the Illinois Legislative Council, Long on *Domestic Relations*, Tiffany on *Landlord and Tenant*, Page on *Wills*, Vold on *Sales*, Huffcutt on *Agency*, Bigelow on *Torts*, the *Restatement of Law on Contracts, Agency, and Torts*, published under the auspices of the American Law Institute, and Jones on *Forms*.

I have also consulted *American Family Laws*, by Vernier; *Common Law Marriage*, by Koegel; Schouler on *Marriage, Divorce, Separation and Domestic Relations*; Schouler's *Divorce Manual*; Madden on *Domestic Relations*; Thompson on *Wills*; Ball's *Law of Copyright and Literary Property*; Williston on *Contracts*; and *Handbook of Partnership*, by Crane.

Grateful acknowledgment is made to my wife, Esther, who goaded me into writing this book and who is largely responsible for whatever virtues it contains. To Mr. Chester H. Lawrence of The New Home Library go my sincere thanks and appreciation for his many valuable suggestions.

S. G. K.

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CHAPTER I

You and the Law

You may never become involved in an unpleasant lawsuit or litigation, finding yourself benumbed by legal phraseology or lost in a maze of court procedure, but you can never hope to escape many instances where you will be faced with matters of a legal nature. The law is so interwoven into the fabric of society that it cannot help but enter into our lives to a very real and vital extent. Many people manage to go through life without ever consulting a lawyer; others beat a constant path to his door. Like patients who refuse to seek aid from a doctor and blindly ignore their ailments, some people avoid a lawyer when only he can bring them relief. Others insist on wasting his time on any pretext.

Lawyers, like doctors, hold a very necessary place in our society. The question confronting most people is when should a lawyer be consulted, and when will the application of common sense, supported by a little knowledge, serve the desired purpose.

In the eyes of the law ignorance is not an excuse. Therefore, it behooves every one of us, for our own benefit and for our own protection, to have at least some familiarity with legal principles and procedures. The old adage about a little knowledge being a dangerous thing may be true in regard to many matters, but here a little knowledge can be a most desirable and useful asset. Consider for a moment a few of the occurrences that you, as Mr. or Mrs. Average American Citizen, may encounter at any time. Suppose, for instance, that you decide to take out a life insurance

policy. How that policy can be interpreted, what constitutes fraud and misrepresentation in an application for insurance, and the scope of the agent's authority to bind his company are but some of the things you should consider in doing so. Or, let us say that you park your car in an accustomed parking lot; you come back for it three hours later to find that it has been stolen. Can you hold the owner of the parking lot responsible for the theft?

To take another example, assume that a neighbor of yours comes to call. While he is waiting on the front porch for you to answer the doorbell, that old plank in the porch gives way, causing the neighbor to fall and break his leg. Can he sue you? You lease an apartment, the agreement being that the landlord is to furnish heat. A spell of cold weather comes along and the heat supplied is far from adequate for your needs. Are you therefore justified in refusing to pay your rent?

These are but a very few of the innumerable instances, chosen at random, where a knowledge of your legal rights may be of great value to you. In making a will, in signing a contract, in forming a partnership, in buying stock in a corporation, in purchasing real estate—in a host of other activities in which you engage during the course of your life—an understanding of your own legal rights and responsibilities, as well as those of other people, will stand you in good stead.

The aim of this book, then, is to provide you with legal information that will be of practical use to you—not in any sense to show you how to circumvent the law, but to help you to know what is and is not legal, and how the law in your particular state regards and interprets various matters within its scope. Presented in as simple a manner as possible, you'll find here more than one thousand questions and answers covering some thirteen important branches of the law—Marriage and Divorce, Criminal Law, Personal Property, Agency, Contracts, Patents, Trademarks, Copyrights, Negligence, Wills, Parent and Child, Adoption, Sales, Insurance, Landlord and Tenant, Partnership and Corporations—

in short, all the legal subjects of the most immediate concern to you. In addition, specimen forms of such things as wills, leases, partnership agreements and so on, have been included.

The general run of legal texts, as every lawyer knows, makes for tedious and involved reading. Part of the difficulty lies in the fact that professional law books deal heavily in abstractions, in recondite legal principles, unrelieved for the most part by illustrative examples. In this book, abstract propositions have been reduced to concrete illustrations put in the simple, straightforward language of everyday use.

If you find that you do need the services of a lawyer when some legal matter arises, here are some of the things it might be well for you to consider before calling upon one.

WHEN TO CONSULT A LAWYER

A wise plan is to consult a lawyer as soon as the legal matter in question comes up, not after the damage has been done. Many cases have been lost by the procrastination of clients, and especially is this true in damage suits. In other cases, a few dollars spent in obtaining sound legal advice may help to save you thousands of dollars later on or preclude costly and tedious litigation. As a general rule, therefore, consult a lawyer whenever a legal paper is served on you; when you become involved in a personal injury or property damage claim; promptly upon an arrest in a criminal action; when you want to sue or are being sued; when you contemplate going into business, or are buying or selling real estate; and, finally, in the writing of contracts, deeds or other legal papers.

HOW TO CHOOSE A LAWYER

There is no hard and fast rule for choosing a lawyer. As safe a guide as any, perhaps, is the recommendation of friends who have

had dealings with him, for a lawyer who satisfies a client over a period of time will generally prove satisfactory to others as well.

In selecting someone to represent you bear in mind the following characteristics of a good lawyer.

1. *He is honest.* He tells clients in unmistakable terms whether or not they have a meritorious claim. If he has any doubts or reservations about the outcome of the case he does not hesitate to mention them. He never guarantees results in any litigation, knowing that the trial of a lawsuit is by its very nature speculative. Hence, a good lawyer shies away from guaranteeing an acquittal in a criminal case or favorable results in a divorce suit. At most, he offers a reasoned opinion of what he believes to be his client's chances of winning or losing a particular case.
2. *He is thorough.* He prepares his legal documents and cases with care and deliberation, so that no hitch is likely to develop that might reasonably have been foreseen.
3. *He is alert and resourceful.* He can shrewdly appraise the strength and weakness of his opponent's case as well as his own. He looks for and finds anything that will help his side and damage his opponent's.
4. *He is a good talker.* He speaks convincingly and what he has to say makes sense. His arguments before a judge or jury are clear and persuasive.
5. *He is tenacious.* He does not give up easily and usually sees a legal matter through to its successful conclusion.

ATTORNEY AND CLIENT RELATIONSHIP

The relationship between an attorney and his client is a highly confidential one. Just as no priest would betray the confession of a penitent, or a physician disclose a patient's intimate affairs, so no lawyer reveals information entrusted by a client. Indeed, the law itself throws a protective cloak around the attorney and client, the lawyer being forbidden to disclose papers, letters and information given to him.

When you consult an attorney, therefore, be sure to tell him the truth, the whole truth, and nothing but the truth. There is a practical reason for this. It is only when the attorney is in full possession of *all* the facts that he can act intelligently on the matter at hand. No sensible patient conceals information that may help a physician effect a diagnosis and cure. Yet many clients withhold facts in the mistaken belief that the less a lawyer knows about the real situation the better. Given all the data, an attorney is able to determine which facts are relevant and which are not, which are useful and which harmful to his client's interests. No layman can possibly do this. Presented with damaging information, a shrewd lawyer prepares his defense accordingly, in order not to be caught unawares by the opposition. Remember, the successful outcome of your case may depend on this!

FEEES

A lawyer's advice is his chief stock in trade. Don't expect to receive free legal assistance unless, perhaps, you are a client of long standing. No one expects a pharmacist to provide free pills or an architect to draw a set of plans without sending a bill. Yet many people expect a lawyer to give advice without being charged for it. Good manners would suggest that after taking up an attorney's time, the client should at least make an offer of payment. If the lawyer, for one reason or another, is generous enough to refuse, that is another matter.

According to the American Bar Association, the principal elements which should determine the amount of a fee are the nature and extent of the services; the difficulties of the case; the novelty and doubtfulness of the question involved; the opposition encountered; the amount of time necessarily devoted to the matter by the lawyer; the amount involved; the importance and magnitude of the cause; the responsibility assumed by the lawyer; the results attained by the lawyer's efforts and the benefits and ad-

vantages they bring to the client; as well as the lawyer's experience, skill and standing in his profession.

Negligence cases are usually handled on a contingent basis. So also are suits contesting a will. This means that the lawyer's fee depends upon whether or not he wins his case. If he wins, he gets a share of whatever is recovered. If he loses, there is usually no charge, so that in cases handled on such a basis the client has everything to gain and nothing to lose.

Most lawyers require a retainer in handling cases other than damage suits, and even in these the practice is not uncommon. A retainer is a portion of the total fee paid by the client to the lawyer upon his acceptance of a case. It binds the attorney to act for and on behalf of his client and by the same token prevents him from accepting any business antagonistic to his client's interests. Moreover, a retainer assures the lawyer of at least part payment for the services he is about to render.

The following list of fees is merely suggestive of what the average lawyer charges an average client. Where the work to be done is complicated or unusual, the charges are apt to be higher than the range indicated. In every case the prospective client will save himself much anxiety if he ascertains at the first interview what the fee is likely to be.

Drawing of simple contract	\$15-25
Drawing of deed and taking acknowledgment	\$15
Drawing of bill of sale	\$25
Drawing petition for sale of real estate and proceedings relating thereto	\$100
Drawing of simple will or codicil	\$25
Drawing of adoption papers	\$75
Drawing of mortgage and note	\$25
Drawing of lease	\$15-25
Drawing of simple partnership agreement	\$25-35
Drawing schedules in bankruptcy and procuring discharge	\$300
Title search	\$25-50

Bill to dissolve partnership	\$175
Bill of Injunction	\$175
Incorporating a business, including counsel and advice as to the advisability of corporate organization and the form it shall take; drawing the certificate of incorporation; the by-laws and minutes of the first meeting of stockholders and directors	\$250
Collection of debts	25% of the amount collected without suit; 33⅓% if suit is filed.
Negligence case	½ to ½ of the amount collected.
Filing a habeas corpus petition	\$100
Defending a criminal case	\$100
Defending a civil suit	\$50-100 for each day spent in court.
Representation in divorce case	\$150
Representation before a police magistrate or justice	\$25-35
Appearance and argument before City Council or any of its Committees, or before any board or officers of the City	\$75 per day
Appearance and argument before Board of Supervisors, County Commissioners, or County Board, Committee or Officer	\$75 per day

CHAPTER II

Marriage and Divorce

A MARRIAGE CONTRACT differs from an ordinary contract in several important essentials. To begin with, the usual business agreement may be dissolved by mutual consent. Having entered willingly into the contract the parties may, by the same token, withdraw from it. Once having entered into a marriage, however, it may be dissolved only in the manner prescribed by law—that is, by annulment, divorce or death. This is so because marriage is the civil status of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally imposed on those whose association is founded on the distinction of sex.

In an ordinary contract, moreover, mental capacity is the sole test for fitness. Hence, all the law requires is that those entering into a business agreement understand the nature of their act. In marriage, on the other hand, more is required, the law insisting that the man be physically capable of fulfilling his marital obligations; if he is not, the marriage is a nullity and may be set aside.

There is still another distinction worth mentioning. An infant's business contracts may be usually avoided by him, an infant being, generally, one under twenty-one years of age. The law takes this position on the understandable theory that those of tender years lack sufficient understanding to be held responsible for their contracts. In contrast, the marriage of those who have not yet attained their majority is as binding as the marriage of two adults.

Marriage, then, is something more than a mere contract. Indeed, the very preservation of marriage and the family are considered of such vital importance that their dissolution is forbidden except for grave and weighty reasons, and then only in the manner provided by law.

How a marriage may be dissolved and under what circumstances is governed by the law of divorce.

Popular belief to the contrary, a divorce will not be granted simply by agreement of the parties. Instead, the laws of nearly all states provide that a divorce must be refused where it is proved that the parties conspired to obtain one. It frequently happens, however—whether by agreement or otherwise—that the party being sued for divorce refuses to contest the divorce action. Even in such cases the other party must have legal grounds for divorce and be able to prove them by corroborating witnesses. Without such corroboration, a divorce will not be granted, no matter what the cause.

What must be substantiated depends, of course, on the basis for the divorce. Where the charge is adultery, testimony must be produced by at least one competent witness that the accused had both the desire and opportunity to perform the act. If the witness can honestly testify that the defendant was actually caught in the act, so much the better, since courts are naturally reluctant to grant divorces on adultery unless the evidence is pretty conclusive.

Should the suit be based on desertion, a witness, ready and willing to testify that the innocent party was deserted under such circumstances as to make the abandonment unlawful, must be procured.

Getting a divorce, then, is not as simple as many people seem to think. Indeed, if the case is hotly contested it is not at all unlikely that the bill for divorce will be dismissed and the party suing denied relief.

Since in the United States there are approximately two hundred and fifty thousand divorces and more than a million and a

half marriages each year, there would seem to be a pressing need to clarify many of the legal problems arising in marriage and divorce. What follows attempts to fill that need.

1. *Question:* What are the chief bars to a valid marriage?

Answer: 1. Generally, blood ties closer than that of first cousins.

2. The existence of a prior marriage not yet dissolved.

3. The lack of sufficient age, generally twenty-one for a man, and eighteen for a woman.

4. The lack of sufficient physical capacity.

5. The lack of sufficient mental capacity.

6. Differences, especially in the Southern states, in race or color.

2. *Q.* Are marriages between first cousins valid?

A. First cousins may marry in Alabama, Colorado, Connecticut, District of Columbia, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Rhode Island, South Carolina, Tennessee, Texas, Vermont and Virginia.

3. *Q.* May an uncle marry his niece or an aunt her nephew?

A. No, in all states.

4. *Q.* Are marriages between whites and Negroes legal?

A. Yes, in Connecticut, District of Columbia, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Washington and Wisconsin. No, in other jurisdictions.

5. *Q.* Which states forbid marriages between paupers, or those dependent upon public charity for support?

A. Delaware, Indiana and Pennsylvania.

6. *Q.* Are "shotgun" marriages binding?

A. No. Such marriages are not binding, since the law considers that the spouse never actually gave his consent to the marriage, the "consent" being given only under the threat of fear and violence, not freely or voluntarily. To escape from a "shotgun" marriage, the husband must leave when-

ever the danger of such threats and violence is over. He may then have the marriage annulled or set aside.

7. Q. What is the minimum age at which boys and girls may marry *with* their parents' consent?

A. In Arizona, California, Indiana, Michigan, Minnesota, Montana, Nevada, New Mexico, Ohio, West Virginia, Nebraska and Wyoming boys may marry at eighteen years, girls upon reaching sixteen years.

In the District of Columbia, Iowa, Kentucky, New York, North Carolina, Texas, Utah and Vermont the ages are sixteen years for males and fourteen years for females.

In North Dakota, Oklahoma, South Dakota and Wisconsin boys may marry at eighteen years, girls at fifteen years.

Alabama, Arkansas and Georgia permit boys of seventeen years and girls of fourteen years to marry.

Colorado, Florida, Idaho, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Rhode Island, Tennessee and Virginia allow boys of fourteen years and girls of twelve years to marry.

In Connecticut the ages are sixteen for both sexes; in Kansas the rule is fifteen for boys and twelve for girls; in Missouri the minimum age is fifteen years for both sexes; in New Hampshire the ages are twenty years for boys and eighteen years for girls; in New Jersey the age is eighteen years for both boys and girls; Pennsylvania has an age minimum of sixteen years for both sexes; in South Carolina the ages are eighteen and fourteen years for boys and girls respectively; in Washington the ages are fourteen years for boys and fifteen years for girls.

8. Q. A boy and girl elope to Elkton, Maryland, to get married. Both are under the legal age and both are getting married without the consent of their parents. Is such a marriage valid?

A. Unless the law of the state in which they live specifically provides that a marriage without the consent of the parents is illegal, the marriage will be upheld.

9. Q. As a joke, John and Mary elope to Elkton, Maryland, to get married. Both are of lawful age. The ceremony is performed

by a Justice of the Peace in complete accord with the state law. Are they legally married?

A. No. One of the elements which makes a marriage binding is consent or agreement. Anything which goes to show that there never was any real consent will indicate that there never was a legal marriage. Either party to the above marriage may have it annulled.

10. Q. Alice, a Roman Catholic, and Herman, a Jew, both want to get married. The state where they reside requires a religious ceremony to make the marriage binding, but Alice and Herman disagree as to whether they should be married by a priest or by a rabbi. Finally, they agree to cross the state line to be married under a law which does not require a religious ceremony at all. Is such a marriage legal?

A. Yes. The general rule is that a marriage recognized as valid in the state where performed will be recognized as valid everywhere, unless a state law specifically asserts the contrary. Only Maryland and West Virginia now require religious ceremonies. In other states a civil ceremony by a Justice of the Peace or other law officer is sufficient.

11. Q. You are an American soldier stationed abroad. Your home state is New York. May you marry your girl by proxy?

A. Yes. (This is true in New York State only.)

12. Q. John proposes to Helen and is accepted, announcement being made of the forthcoming marriage. Later, John recants and tells Helen that he doesn't want to go through with the ceremony. What can Helen do?

A. She can either forget it or sue John for breach of promise. If she sues, she is entitled to tell the jury the mental agony she suffered because of John's defection, as well as the benefits she might have secured had she married him.

13. Q. In the above question, suppose John is nineteen—that is, under the legal age of consent for marriage. May he still be sued for breach of promise?

A. No. One under the legal age cannot be sued for breach of promise.

14. Q. Suppose Helen is under legal age and sues John for breach of promise. May John defend on the ground that Helen is not yet eighteen?

- A. No. Here the case is different. You cannot commit a wrong, as John did, and urge in your defense that the other party is under age.
15. Q. A marriage broker brings John and Helen together for the purpose of matrimony. Subsequently, the couple wed and the marriage broker, or "matchmaker," duns John for his fee. Can he collect?
- A. No. Such arrangements are frowned upon by law as being opposed to sound public policy. Here there is only a moral obligation to pay, not a binding legal one.
16. Q. What are the legal rights and duties of a husband?
- A. He must provide a home, support the wife and children, and protect her and them from injury or insult.
17. Q. What are the legal rights and duties of the wife?
- A. She must aid in the maintenance of the family by such reasonable labor as the domestic requirements and financial position demand. A husband, however, cannot compel his wife to engage in business, work for wages, or even work for him in his business.
18. Q. Is a husband liable for his wife's debts contracted before the marriage?
- A. At one time he was, but nearly all states have abolished the rule so that now a husband is not held generally liable for his wife's premarital obligations.
19. Q. What rights does a woman have to the property she acquired before marriage?
- A. Most states now provide that the earnings and property of the wife shall be her separate property, to dispose of as she sees fit, without regard to the wishes of her spouse. If her husband does take her property, she may, through her attorney, institute legal proceedings to secure the return of such property.
20. Q. Tom promises to settle \$5,000 on Mary after their marriage. How may Mary make certain that Tom will fulfill his promise?
- A. The best method is to have her lawyer draw up an antenuptial agreement, or marriage settlement. Such a contract binds Tom to pay the stipulated sum and will be enforced

in the courts. Marriage settlements are designed to protect the spouse in the control of his or her property. They may provide that the property of each spouse is to be separate and independent from the other; that neither spouse is to acquire any interest in the estate of the other; that each spouse is to control separate property and contribute proportionately to the family expenses; that the wife is to hold her property to her separate use; or that the property of both spouses is to be held jointly. Any other arrangement, of course, may be made between the parties and will be upheld unless fraud is shown. Such agreements, finally, may be entered into either before or after the marriage ceremony.

21. Q. Before your marriage, you enter into a written agreement to settle all your property on your wife. After marriage you have a change of heart, refusing to go ahead with your agreement. What position will the courts take?
A. Such an agreement is binding and the courts generally will uphold it.
22. Q. May a husband be convicted of rape for having sexual intercourse with his wife, against her will?
A. No.
23. Q. Does a husband have the right to slap or beat his wife?
A. No.
24. Q. While the husband is asleep, the wife removes his wallet from his trousers. Is she guilty of any crime?
A. No. In the eyes of the law the husband and wife are one person; since it is impossible to steal from yourself, it is impossible to steal from your spouse.
25. Q. Suppose a wife elopes with another man and steals money from her husband to pay her way. Is she guilty of any crime?
A. She is guilty of larceny; so is her lover if he helps her.
26. Q. You want to live in the city. Your wife, however, wants to live in the country with her mother. Do you have to follow her or does she have to follow you?
A. Generally speaking, it is the duty of the wife to live where her husband desires. Even a promise before marriage not to

take her away from the neighborhood of her mother and friends is not binding. But the husband must not be unreasonable about it. Should he, for example, want to live in a neighborhood far below his usual station in life, the wife may refuse to follow him, and the courts generally will uphold her.

27. Q. John and Helen, man and wife, are living happily together. Helen's mother, for some unaccountable reason, takes a violent dislike to John, and insinuates that he is keeping another woman. As a result of the mother's accusation, Helen finally leaves John. As a matter of fact, John is innocent of this charge. What can he do?

A. He may sue Helen's mother for alienation of affections.

28. Q. Suppose, in fact, John is really keeping a mistress. What then?

A. He has no right of action against Helen's mother, but he had better employ counsel to defend himself in a divorce suit.

29. Q. What is a common law marriage?

A. A common law marriage is one where a couple live together as man and wife without going through a marriage ceremony.

30. Q. Are such common law marriages legal?

A. Yes, in Alabama, Colorado, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Michigan, Minnesota, Mississippi, Montana, Nevada, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas and Wyoming. It is now provided by statute in all states that children of a common law marriage may be legitimized by the act of one or both parties. All states now permit the child to become legitimate if the parents later intermarry. In addition, Alabama, Arkansas, Colorado, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Ohio, Texas, Vermont, Virginia and Wyoming require that the father acknowledge the child in order to complete legitimatization. Louisiana, New Hampshire and New Jersey require the acknowledgment to be

by both parents. Besides the above named jurisdictions, California, Idaho, Montana, Nebraska, Oklahoma, South Dakota and Washington require an acknowledgment or an "adoption" into the father's family, in addition to the marriage of the parents, in order to give the child certain rights of inheritance. Where the child is legitimized he may inherit property as if born in wedlock. In those states refusing to recognize the validity of common law marriages, a child born out of wedlock cannot inherit from the father but only through the mother.

31. Q. What is the difference between a voluntary and a legal separation?

A. Where a husband and wife agree to live separate and apart, without going into court, the separation is said to be voluntary. Spouses living apart under such circumstances may enter into a voluntary separation agreement arranged by respective counsel. Such an agreement may contain any terms agreed upon by the parties. When this contract is violated, the wife may bring the husband into court and secure a judgment against him. For the husband's refusal to pay the judgment, however, the wife cannot have him sent to jail, as can be done in the case of a legal separation. A legal separation is the result of litigation in court brought by one spouse against the other, and its terms are embodied in the court's decree. For violation of the terms the husband may be committed to jail. A legal separation is similar to a partial divorce. Either spouse may procure a separation upon showing just cause. Under such a separation the parties, though living apart, remain man and wife and may not remarry. Where the wife procures the legal separation, the husband, by court order, is usually under an obligation to support her. Where the husband obtains the decree, he is usually under no such obligation. Neither the husband nor the wife, living separate and apart under such an agreement, may commit an act of marital infidelity. Should either spouse commit adultery, the innocent party may file suit for an absolute divorce.

32. Q. John and Helen, after having been married, enter into an agreement whereby they plan to live separate and apart six

months after the signing of the contract. Is such a pact valid?

A. No. The separation must take place at the time of the agreement or immediately following it.

33. Q. You and your wife are living separate and apart. To forestall her running up debts, you insert in your newspaper the following advertisement: "I will not be responsible for my wife's debts." A grocer sells your wife some canned goods, butter and meat. Can the grocer hold you responsible for these items?

A. Yes. Such advertisements are usually worthless. Under the law a husband is responsible for his wife's necessities, despite the fact that they are living apart. Such necessities include food, medical and dental attention, clothes, shelter and even jewelry, perhaps.

34. Q. What is the chief difference between an annulment and a divorce?

A. In a divorce the couple become ex-spouses. An annulment is a legal decree that no marriage ever existed; it has the effect of declaring the couple single. An annulment also bastardizes the children; a divorce does not.

35. Q. Harry represents himself to Mary as honest and industrious, whereas, in fact, he is a professional thief. After the marriage, Mary discovers Harry's criminal record and desires to have the marriage set aside. Will she succeed?

A. Yes. Marriage is a civil contract, and where one of the parties is imposed upon by the fraud or false representation of the other in an important matter, an annulment of the marriage may be secured. Such fraud exists, for example, where a husband represents that he is not addicted to the use of drugs and is, in fact, a drug addict beyond hope of reformation; where a woman falsely represents that she is the wife of another who is the father of her child, while the fact is that she has been his mistress; where the husband refuses to fulfill a promise to have a religious ceremony in addition to the civil ceremony, such a ceremony being necessary under their faith to make the marriage binding. Unless forgiven, it is sufficient ground for annulment that the wife, at the time of the marriage, is pregnant by another man with-

out the knowledge of the husband. It is also true, generally speaking, that a marriage may be annulled where it has been induced by the false claim of the wife that the husband is the father of her unborn child.

41.

36. Q. In marrying Ann, John conceals the fact that he is afflicted with a loathsome or contagious disease. Later, when Ann discovers that John is being treated for syphilis, she files a bill to have the marriage set aside. Will she succeed?

A. Yes. The same applies to a disease like tuberculosis.

37. Q. May a marriage be annulled on the ground that the husband is sexually impotent?

42.

A. Yes, but action must be brought within a reasonable time after the fact is discovered.

38. Q. How about a case where a man marries an insane woman in order to obtain her money?

A. Such a marriage is void and can be annulled when brought to the court's attention, since an insane woman cannot give her consent.

39. Q. In order to persuade Mary to marry him, John tells her that he has \$5,000 in the bank, plus a large quantity of War Bonds. Mary, who is doubtful of her love for John but feels the need for economic security, gives her consent. A few days after the marriage, John tells Mary that he has only \$200 in the bank and no War Bonds at all. May the marriage be annulled?

43.

A. No. False representations as to social or financial standing do not constitute grounds for annulment of a marriage, unless the wife is so young or feeble-minded as to give the court the notion that she was coerced into it.

40. Q. After living with her husband for five years, a wife attempts to have the marriage annulled on the ground that the husband is impotent, i.e., unable to have sexual intercourse. Will she succeed?

44.

A. No. Such a delay justifies the court in being suspicious of the good faith of the wife, and unless the delay can be explained to the satisfaction of the court, the bill will be dismissed. To succeed in having a marriage annulled, suit must

be brought within a reasonable time after the ground or cause of annulment is discovered.

Q. What should you do when you are served with divorce papers?

A. Consult a lawyer. While you need not contest the divorce if you don't want to, it is always a wise precaution to consult your attorney whenever you are served with legal papers, including divorce, so that you may properly be advised as to your legal rights, division of property, custody of children, etc.

Q. In a divorce case is it necessary for the person being sued to appear in court?

A. No. The person being sued can either refuse to answer—whereupon, the person suing for the divorce will obtain it by default, providing he proves his case and is corroborated by at least one witness; or, the person being sued may employ an attorney to file an answer on his behalf which serves to speed up the proceedings. The only time it is necessary for the defendant to appear in court is where the divorce is contested.

Q. A woman without money of her own wishes to obtain a divorce from her husband. What can she do?

A. She should consult a lawyer who will arrange to have the court compel her husband to pay counsel fees, if he is financially able to do so. In divorce suits, the wife is looked upon as the favored suitor; where she lacks financial means, provision will be made to defray costs of the proceedings. She may also be entitled to alimony pending the final outcome of the case, and permanent alimony.

Q. What is the difference between an absolute and a limited or partial divorce?

A. A limited or partial divorce *suspends* but does not destroy the marriage relationship. In other words, the parties are still legally man and wife except that they do not live together; the husband is still liable for his wife's necessities. Neither party may remarry during the life of the other. To finally dissolve the marriage, an absolute divorce must be obtained. An absolute divorce puts an end to all marriage

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ties, rights and liabilities, so that the husband is no longer responsible for his wife's support, unless she has secured the divorce and has been awarded alimony. Either party may remarry, generally, but as to this, see Question 96.

45. Q. What are the grounds for absolute divorce in the various states?

A. Aside from South Carolina, where no divorces are granted, *Adultery* is a ground in all states.

Desertion is ground for divorce in all states except New York and South Carolina.

Divorce on the ground of *Cruelty* may be had in all states except Maryland, South Carolina, New York, North Carolina, Virginia and Tennessee.

Imprisonment is ground for divorce in all states except Florida, Maine, Maryland, New Jersey, North Carolina, Rhode Island, New York and South Carolina.

Divorces on the ground of *Excessive Intoxication* may be had in all states except South Carolina, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Texas, Vermont and Virginia.

Impotency is a ground for divorce in all states except South Carolina, California, Connecticut, Delaware, Idaho, Iowa, Louisiana, Montana, New Jersey, New York, North Dakota, Texas, Vermont, West Virginia and South Dakota.

Non-support and *Wilful Neglect* of the wife is a ground for divorce in Arizona, California, Colorado, Idaho, Indiana, Kansas, Maine, Massachusetts, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington and Wyoming.

Insanity is a ground for absolute divorce in Alabama, California, Colorado, Connecticut, Delaware, Idaho, Indiana, Kansas, Maryland, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Vermont, Washington and Wyoming.

Pregnancy with another man at time of marriage is a ground for divorce in Alabama, Arizona, Georgia, Iowa, Kansas, Kentucky, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, Tennessee, Virginia and Wyoming.

Voluntary living apart for a specified number of years is ground for divorce in Arizona (5 years), Arkansas (3 years), Kentucky (5 years), Louisiana (2 years), Maryland (5 years), Nevada (3 years), North Carolina (2 years), Rhode Island (10 years), Texas (10 years), Washington (5 years), Wisconsin (5 years) and Wyoming (2 years).

Bigamy, or prior existing marriage, is ground for divorce in Arkansas, Colorado, Delaware, Florida, Illinois, Kansas, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania and Tennessee.

Fraud, including force and duress, is a ground for divorce in Connecticut, Georgia, Kansas, Kentucky, Ohio, Oklahoma, Pennsylvania and Washington.

Indignities against the person are grounds for divorce in Arkansas, Missouri, Pennsylvania and Wyoming.

Marriage within degree prohibited by law, as, for example, that between an uncle and his niece, is ground for divorce in Florida, Georgia, Mississippi and Pennsylvania.

Conviction of felony before marriage, if unknown to plaintiff, is a ground for divorce in Arizona, Missouri, Virginia and Wyoming.

Habitually violent temper or vicious conduct is a ground for divorce in Florida and Kentucky.

Attempt on the life of the other spouse is ground for divorce in Illinois, Louisiana and Tennessee.

Where one spouse is absent or unheard of for seven years, a divorce will be granted in Connecticut and Vermont.

Crime against nature, as, for example, sodomy, is ground for divorce in Alabama and North Carolina.

Membership in a religious sect which prohibits or interferes with marriage duties is ground for divorce in Kentucky and New Hampshire.

Fleeing to avoid arrest for infamous crime is ground for divorce in Louisiana and Virginia.

Vagrancy of husband is ground for divorce in Missouri and Wyoming.

Inability to support family, acquired or congenital, is ground for divorce in Delaware.

Mental incapacity at time of marriage is ground for divorce in Georgia.

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Communicating a venereal disease to spouse is ground for divorce in Illinois.

A loathsome disease concealed until marriage is ground for divorce in Kentucky.

Unreasonable refusal of wife to leave state with husband is ground for divorce in Tennessee.

Prostitution or lewdness before marriage, if unknown to husband, is ground for divorce in Virginia.

Insanity or idiocy at time of marriage is ground for divorce in Mississippi.

Incompatibility is a ground for divorce in but one state—New Mexico.

46. Q. What are the grounds for a partial divorce, that is, one from Bed and Board, in which the parties may not re-marry?

A. Partial divorces are granted in Alabama, Arizona, Arkansas, Delaware, Georgia, Indiana, Kentucky, Maryland, Michigan, Nebraska, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia and Wisconsin.

In Alabama a partial divorce is granted on grounds of *cruelty, or same grounds as absolute divorce.*

Intolerable conduct, or same grounds as for absolute divorce, is required in Arizona.

In Arkansas the grounds are the *same as for absolute divorce. Adultery, bigamy, imprisonment for crime, cruelty, desertion, or hopeless insanity of husband* are grounds for partial divorce in Delaware.

In Georgia *adultery, cruelty, drunkenness* are grounds. *Adultery, desertion, cruelty, constant strife, drunkenness, drug addiction, wanton neglect of marriage duties for six months* are grounds in Indiana.

Partial divorces are granted in Kentucky on *grounds deemed sufficient* by the court. They are the same as grounds for absolute divorce.

Maryland grants partial divorces on grounds of *cruelty, vicious conduct, abandonment and desertion.*

Extreme cruelty, desertion for two years, and non-support of wife are recognized grounds in Michigan and Nebraska.

In New Jersey grounds for a limited divorce are the same as those for an absolute one.

Cruelty, unsafe conduct, abandonment and non-support of wife are recognized grounds in New York.

Abandonment, turning spouse out of doors, cruel and barbarous treatment are grounds in North Carolina where, after two years, the limited divorce becomes absolute.

In North Dakota *cruelty, making life intolerable, or same grounds as for absolute divorce*, are grounds for partial divorce.

Adultery, desertion, non-support of wife for six months, conviction of felony, drunkenness for one year, cruel and inhuman treatment and personal indignities are grounds in Oregon.

In Pennsylvania *abandonment, turning wife out of doors, cruel and barbarous treatment of wife, indignities to wife and adultery* are grounds for partial divorce.

Rhode Island and Vermont grant limited divorces on the *same grounds as absolute divorces*. In Rhode Island, however, a limited divorce may be granted on other *grounds deemed sufficient by the court*.

Cruel and inhuman treatment, indignities to wife, abandonment or turning out of doors or non-support of wife are stated grounds in Tennessee.

In Virginia *cruelty, fear of bodily injury, abandonment or desertion* are grounds, and *desertion, cruelty, drunkenness, non-support of wife* are grounds in Wisconsin.

47. Q. How long must you be a resident of a state before you can file suit for divorce?

A. One year for all grounds in Arizona, California, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland (if insanity, two years), Mississippi, Missouri, Montana, New Hampshire, New Mexico, Ohio, North Dakota (five years for insanity), Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia and Washington.

Alabama—Abandonment (one year, but if defendant is a nonresident charged with non-support, two years).

Connecticut—Plaintiff must be a resident for three years, except (a) where cause arose after removal to the state,

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(b) where plaintiff domiciled within state at time of marriage and has returned with intention of remaining permanently, (c) where defendant has lived in state for three years and is actually served with divorce papers.

Delaware—Divorce action may be brought for adultery or bigamy if either party was a resident of the state when cause arose. For any other grounds, the plaintiff must be a resident for two years. If cause arose out of state, it must be grounds for divorce in the state where it occurred.

Louisiana—Divorce may be obtained if living apart and a resident for two years.

Massachusetts—Plaintiff must be a resident for five years if parties have not lived together within the state or cause arose within another state. If both parties were residents of the state at the time of marriage, then three years' residence is sufficient.

Michigan—Plaintiff must be a resident for two years unless defendant is a resident at the time suit is begun, or cause arose within the state, or parties cohabited within the state. Otherwise, one year of residence is sufficient.

Nebraska—If cause arose out of the state, two years' residence is required. If cause arose within the state, one year is needed.

New Jersey—In all cases except adultery, if defendant cannot be served personally, two years' residence is needed if grounds are recognized in the other state as well as in New Jersey.

North Carolina—Residence required is two years, except where the ground is separation for two years. In that case, one year of residence is sufficient.

Rhode Island—Residence required for absolute divorce is two years. For partial divorce, the time would be such as the court deems sufficient.

Tennessee—Residence required is two years.

West Virginia—Residence required is two years if cause arose out of the state and such cause is recognized in the other state. If either party is a resident of the state, then one year is sufficient. In case of adultery, no residence is required if defendant is personally served.

Wisconsin—Residence must be two years, or if, since cause of action arose, either party has been a resident for two years. For adultery or bigamy, if either party is a resident, suit may be filed.

Residence may be less than one year in these states for all or some grounds:

Arkansas—Two months.

Colorado—Residence for one year, except in case of adultery or extreme cruelty and the offense was committed within the state.

Florida—Ninety days.

Idaho—Six weeks.

Minnesota—Residence of one year, except where adultery was committed while plaintiff was a resident of the state.

Nevada—Six weeks.

New York—Period of residence is less than one year if marriage took place within the state; if plaintiff was a resident of the state when offense was committed and a resident when suit started; or if wife dwells within the state.

South Carolina—Residence for length of time satisfactory to court (decree for separation only).

Vermont—Party suing must be resident six months before filing and one year before final hearing.

Wyoming—Sixty days.

Q. In a fit of temper, and after an argument with his wife, the husband goes out with another woman and commits adultery. May the wife secure a divorce for this one act of adultery?

A. Yes, in most states.

Q. Is direct evidence of adultery required—that is, must the party be caught in the act?

A. Theoretically, no. Practically, yes. The law does not require that the guilty party be caught in the act, although this is the best method of obtaining the divorce. At the very minimum, the law requires proof by a corroborating witness that the accused party was seen under such circumstances as to show both the opportunity and the desire to commit the act. For example, if the accused is discovered in a hotel

room with a stranger under suspicious circumstances, this might be sufficient evidence.

50. *Q.* A wife, taking a friend with her, follows the former's husband who is seen entering a house of prostitution. Is this sufficient to obtain a divorce on the ground of adultery?

A. Yes.

51. *Q.* A husband and wife agree to obtain a divorce. In furtherance of this plan, the husband agrees to be caught in adultery. Is such a divorce legal?

A. Not if the court hears about it. Both parties are guilty of fraud on the court; should the facts later come out, the divorce will be set aside.

52. *Q.* Suppose a husband commits adultery. Confessing to his wife, the spouse forgives and continues to live with him. Later, the wife changes her mind and seeks to obtain a divorce. Will she succeed?

A. No. In "condoning" or forgiving the adultery, the wife forfeits her right to secure a divorce.

53. *Q.* In the above question, assume that after the wife's forgiveness the husband again commits adultery. May she then obtain a divorce?

A. Yes, since the forgiveness or condoning is merely conditioned on the husband's future good behavior.

54. *Q.* A few years after marriage, the husband contracts a venereal disease. Is this sufficient to justify a divorce on the ground of adultery?

A. No, not in itself. Venereal disease may be picked up innocently, without the husband having had intercourse with a woman. Where, however, the disease is transmitted through a woman and her identity is discovered, a divorce may be had on the ground of adultery.

55. *Q.* A wife sues her husband for divorce, charging adultery. The husband comes into court and admits the charge. Will the wife be successful?

A. No, not unless she produces a witness who corroborates her story. The confession of the husband, uncorroborated, is insufficient.

56. Q. How long must you live apart from your spouse to file suit for divorce on the ground of desertion?

A. The period is *one year* in Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin and Wyoming.

Eighteen months in Maryland.

Two years in Alabama, Delaware, Indiana, Iowa, Michigan, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Virginia and West Virginia.

Three years' separation is required in Connecticut, Georgia, Maine, Massachusetts, New Hampshire, Ohio, Texas and Vermont. Louisiana requires five years; Rhode Island five years or less.

New Mexico has no time limit.

New York does not grant divorces on the ground of desertion, only adultery.

In South Carolina no divorces are granted.

57. Q. A wife unjustifiably refuses to have sexual intercourse with her husband. The husband leaves the wife, remaining away for the period required to make out a case of desertion. May he secure a divorce against his wife on the ground of desertion?

A. Yes, the wife's refusal to have marital relations with her husband, without just cause, is ground for his leaving her. If he remains away for the required length of time he may secure a divorce on the grounds of abandonment and desertion. This is also true, of course, where the husband refuses to have intercourse with the wife, and the wife leaves.

58. Q. A husband calls his wife vile names, falsely accuses her of adultery, and orders her to leave the house—which she does. The husband then files suit for divorce on the ground that his wife deserted him. Will he succeed in obtaining the divorce?

A. No. Legally, the husband deserted the wife because, by his actions, he forced her to leave. Hence, the wife may secure a divorce from the husband.

59. *Q.* A wife leaves her husband's home because of the latter's insistence on having intercourse so frequently as to impair her health. The husband then files a divorce bill against the wife, charging that she abandoned and deserted him. Will he succeed?
- A.* No. The wife may, however, leave the husband under such circumstances, and procure a divorce against him on the ground of cruelty, or even on abandonment and desertion, if she remains away the required length of time.
60. *Q.* After an argument of no great consequence, Helen leaves her husband. Becoming repentant, she seeks to return; but he, having once got rid of her, refuses to take her back. Who, if anyone, is entitled to a divorce?
- A.* Helen. The rule is that a deserting spouse who makes an offer in good faith to return must be accepted. If such spouse is rejected, the law then takes the view that it is the husband who deserted the wife and not the other way around.
61. *Q.* A husband and wife agree to separate by mutual consent. Later, the wife, in good faith, seeks a reconciliation but the husband refuses to return. The wife then files a bill for divorce. Will she succeed?
- A.* Yes, in seeking to return in good faith, the wife offers to resume the marital relationship. The husband's refusal to return makes him the guilty party; therefore, the law considers that it is the husband who abandoned the wife.
62. *Q.* A husband is forced to leave his wife's home because of the nagging interference of his mother-in-law who lives with them. After waiting the time required by law, the husband files a divorce action against the wife, alleging that he was forced to leave her because of the behavior of his mother-in-law. Will he obtain the divorce?
- A.* Probably. A husband has the right to determine whether or not he wants his in-laws to live with him. If he refuses to live with his in-laws, and his wife refuses to live with the husband because of this, the husband may secure a divorce against the wife on the ground that she forced him to leave her.

63. Q. Without just cause a wife leaves her husband. Regretting her action shortly thereafter, she offers in good faith to return to him. The husband now refuses to accept her and files divorce proceedings. Will he succeed?
- A. No. The husband is now guilty of "constructive" desertion because of his refusal to accept his wife's offer made in good faith. Constructive desertion exists when one spouse is compelled, by the wrongful conduct of the other spouse, to leave the matrimonial abode. The party guilty of constructive desertion is the spouse forcing the other party to leave the home. The general rule is that the person at fault in the original separation, who desires to resume the marriage relationship, must make a good-faith, unconditional offer to return. When such an offer is made and refused, the fault of desertion is thrown on the refusing spouse.
64. Q. A husband states, in the presence of his wife, that the latter is "screwed" and "feeble-minded." The wife leaves the husband and files suit against him for divorce on the ground of cruelty. Will she succeed?
- A. No. As a rule, to justify a divorce on the ground of cruelty, the causes must be grave and weighty. Physical violence, such as beating one's wife, is considered cruelty in those states where cruelty is a ground for an absolute divorce. Refusal to provide medical attention for a spouse is also considered legal cruelty, as are threats which endanger the health or life of the spouse. Accusing a wife falsely of being an adulteress in front of her friends is considered such "mental" cruelty as to justify a divorce on that ground. Of course, in all such cases, the cruelty must be corroborated by at least one witness.
65. Q. A husband compels his wife to submit to an abortion. Shortly afterward, she files a divorce action against him, alleging cruelty. Will she succeed?
- A. Yes.
66. Q. Mary has children by a former marriage, but Dick is so eager to marry her that he agrees to let Mary bring her children to his home after the marriage. After the marriage, Dick compels Mary to get rid of her children, informing her that if she doesn't he will leave. Mary refuses

and Dick does leave. Suit for divorce is brought against Dick by Mary. Will she succeed?

A. Yes, on the ground of cruelty.

67. Q. What is meant by mental cruelty?

A. Generally, any conduct, by either spouse, which causes the other mental suffering, such as constant, abusive and humiliating treatment of one spouse by another.

68. Q. A husband fails to talk to his wife, refuses to accompany her anywhere and, instead, spends his evenings with his friends. The wife files suit for divorce, charging mental cruelty. Will she succeed?

A. Yes, if she lives in a state where mental cruelty is a cause for divorce.

69. Q. Without just cause, a husband persists in making constant, insulting remarks about his wife's relatives. Is this sufficient to warrant a divorce on the ground of mental cruelty?

A. Yes, if that is a cause for divorce in her state.

70. Q. Mary marries John, knowing that he is an habitual drinker but hoping that she can "reform" him. Finding, after the marriage, that he still persists in his habit of excessive drinking, Mary realizes that any "reformation" is futile and files divorce proceedings against him. Will she succeed?

A. No, because she knew in advance of his drinking habit. Had Mary been ignorant of John's addiction to alcohol prior to the marriage, she could claim that his heavy drinking was impairing her health, constituting mental cruelty, and on this ground could secure a divorce.

71. Q. After the marriage, a husband wilfully refuses or neglects to support his wife. May the wife secure a divorce on the ground of non-support?

A. Yes, in most states. Even in those states where there is no provision for divorce on the ground of non-support, if the husband fails to provide for his wife's necessities and she has no other means of obtaining support, she may leave him. After waiting the required period, she may obtain a divorce on the ground of desertion—the husband being considered the deserter.

72. Q. Is incompatibility, as such, a ground for divorce?

A. No, except in New Mexico. Mere inability to get along is no cause for divorce. Frequently, however, the inability to get along leads either to adultery, desertion or some other legal cause which is a ground for divorce.

73. Q. John, a resident of Baltimore, is abandoned without just cause by his wife. Under the Maryland law, the separation must continue uninterruptedly for eighteen months before an absolute divorce can be granted. A few months after the desertion, however, John goes to Reno, stays there six weeks, obtains a divorce, and thereupon returns to Baltimore where he continues to reside. Shortly after his return, John's wife causes his arrest on the ground of non-support. John informs his lawyer of his Reno divorce. Is John's Reno divorce valid so that he may avoid paying his wife money for her support?

A. No. A Reno divorce is not recognized in Maryland, nor, indeed, in most other states. Where one goes to Reno for the sole purpose of procuring a divorce, without the intention of establishing a permanent residence in Nevada, other jurisdictions will not recognize such a divorce decree, since the person seeking the divorce never actually abandoned his former residence. The reason most Reno divorces stand is that they are rarely contested. When they are contested, and it is proved that the person seeking the divorce went to Reno for the express purpose of obtaining one, and that the wife (or husband) was never personally served with divorce papers, the Reno divorce will not, as a rule, be binding.

74. Q. Are Mexican divorces legal?

A. No, for the same reason as above.

75. Q. May a divorced woman resume her maiden name?

A. Yes. Where the wife desires to resume her maiden name she should instruct her attorney to have the change incorporated in the divorce decree.

76. Q. After a divorce, what happens to the property?

A. In some states there is a division, equal or otherwise, between the parties. Other states restore the ownership of the

property as it existed before the marriage. Still other courts dispose of it in accordance with what, in their judgment, is both fair and just.

77. *Q.* After a divorce, who is entitled to custody of the children?

A. The usual test is: what is best for the child? Where the children are young, other things being equal, the mother is preferred as their custodian; this is especially so in the case of female children. Where the mother is morally unfit to raise the child, custody is withheld from her and given to the father—unless he is disqualified for the same reason. Also, as a general rule, the courts are inclined to award the custody to the innocent party in a divorce action.

78. *Q.* Suppose a child expresses a preference as to the parent he prefers living with. Will the court grant the child's request?

A. Yes, since the court always bears in mind the child's welfare. Naturally, if the parent selected by the child is unfit to have custody, the court will disregard the child's wishes and determine for itself with whom the youngster shall live.

79. *Q.* As part of the divorce proceedings, it is agreed among the parties that the mother shall retain custody of the children. Is the court bound by this agreement?

A. No. Such agreements cannot deprive the court of its right to determine the question solely in the light of the child's welfare.

80. *Q.* Suppose, in a divorce case, no award is made as to the custody of the children. Who is responsible for their support?

A. The father, until the children become of age, when he is discharged from his obligation.

81. *Q.* Who is liable for the children's support after the divorce?

A. The father, usually.

82. *Q.* Once granted, may a divorce decree be set aside?

A. Yes. Divorce cases may be reopened, upon proper application by counsel, when fear or force was used to compel the institution of the suit; when the parties lived as man and wife before the decree was signed by the judge; when there was a conspiracy between the parties to suppress important evidence which, if presented, would have caused a denial of the divorce; where the decree was obtained by fraud on the

court; or where it was obtained through agreement of the parties. The attempt to have a divorce decree set aside must be undertaken as promptly as possible after the fraud is discovered.

83. Q. A married woman is named as beneficiary in a policy of insurance on the life of her husband. After the divorce and upon the ex-husband's death, she files a claim to recover the insurance money. Is she entitled to it?
- A. Yes, assuming that the husband had not changed the beneficiary.
84. Q. What is alimony?
- A. Alimony is the allowance a husband is compelled to pay, by order of court, for his wife's maintenance while she is living apart from him, or after they are divorced. It includes money for her food, clothing, shelter and other necessities. In short, alimony is an allowance paid to the wife out of her husband's estate or income; it is allowed where absolute or partial divorces are granted.
85. Q. Is alimony ever allowed without divorce proceedings?
- A. Yes, in many states. This is known as a proceeding for separate maintenance. But to justify the court in granting a wife alimony without divorce proceedings, she must show that she is separated from her husband and is absolutely deprived of his support. The wife must also show that the separation was caused through no fault of hers.
86. Q. What is meant by temporary alimony?
- A. Temporary alimony is an allowance for support granted the wife, by the court, pending the final outcome of the divorce case. It is granted as a matter of course, so that the wife may employ counsel and have the necessities of life until a decision is reached.
87. Q. What is permanent alimony?
- A. This is money allowed the wife for support, to take effect *after* the divorce is granted, and usually lasts during the joint lives of the parties. In Connecticut, Montana, New York and Louisiana alimony ceases upon the remarriage of the wife.

88. Q. Is a woman entitled to alimony under all circumstances?
A. In one form or another, alimony is granted in all of the states, except South Carolina, North Carolina, Delaware and Texas, when the woman secures the divorce, or where she is the innocent party in a suit brought against her. By agreement between the parties, however, a wife may waive her right to alimony.
89. Q. Are husbands ever entitled to alimony?
A. Yes, in Illinois and West Virginia.
90. Q. How is the amount of alimony fixed?
A. Questions of alimony are determined by the court. The amount a woman receives depends on the earning capacity of the husband, the financial condition of the parties, their social standing, and the needs of the wife and children—though other matters may be taken into consideration, such as the wife's separate income or estate. As a rule, courts allow between one-fourth and one-third of the husband's income.
91. Q. May the amount of the alimony awarded be changed?
A. Yes, but it is entirely up to the court. To obtain a reduction or an increase in the amount of alimony awarded, counsel must submit evidence of a change in the circumstances of one or both parties, such as the changing needs of the children, helpless condition of the wife, or decreased earning power of the husband.
92. Q. What penalty is there when the husband refuses to continue alimony payments?
A. He may be held in contempt of court and be committed to jail until he has "purged" himself by resuming payments.
93. Q. Suppose a wife remarries. Is she still entitled to alimony?
A. Remarriage, in itself, does not abolish alimony payments in most states. California, Connecticut, Montana, New York and Louisiana, however, provide that alimony terminates upon the divorced wife's remarriage.
94. Q. Must the husband continue alimony payments upon his own remarriage, where his income is sufficient only to support one woman?
A. Yes.

95. Q. May you remarry immediately after a divorce?

A. Yes, in Arkansas, Connecticut, Florida, Idaho, Illinois, Kentucky, Maryland, Maine, Missouri, Montana, Nevada, New Mexico, North Carolina, Ohio, Washington and Wyoming.

96. Q. Which states have restrictions on remarriage after divorce?

A. In *Alabama* neither party may remarry for sixty days after date of final decree. The guilty party must then obtain permission of the court. Neither party may remarry for one year after date of final decree in *Arizona*. A decree is not final for one year after issue in *California*. In *Colorado* a decree is not final for six months after date of decree. A decree is not final for one year after date of issue in *Delaware*. The length of time before remarriage is determined by a jury, subject to revision by the court, in *Georgia*. In *Indiana*, if the decree is obtained by default and service by publication, the plaintiff is barred from remarriage for two years after the date of the final decree. Remarriage of either party is forbidden in *Iowa* within a year after date of final decree, unless permitted by the court. Remarriage of either party in *Kansas* is forbidden for six months after date of final decree. *Louisiana* provides that, in a divorce based on adultery, the guilty party may not marry his or her accomplice. If the wife obtains the decree, she may not remarry for ten months after date of final decree. In *Massachusetts* the complainant may not remarry for six months after date of final decree; the defendant may not remarry for two years after date of final decree. There is no statutory restriction in *Michigan*, unless stated in the final decree. In *Minnesota* there can be no remarriage within six months after date of final decree. In *Mississippi* there is no statutory restriction—except in the case of adultery when the court may prohibit remarriage of the guilty party. A decree is not final in *Nebraska* for six months after date of decree. In *New Hampshire* a decree becomes final on the last day of the term of court. A *nisi*, or provisional, decree is entered which becomes absolute after three months in *New Jersey*. A guilty party in *New York* may not remarry in New York until three years have elapsed, and then only if the re-

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marriage is not prohibited in the state granting the divorce. An interlocutory divorce becomes final in three months. An interlocutory decree in a divorce suit is a provisional or temporary decree. It is something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy. A final decree, on the other hand, is one which fully and finally disposes of the whole litigation, determining all questions raised by the case and leaving nothing requiring further judicial action.

In *North Dakota* a decree may restrict remarriage as the court sees fit. A decree is not final in *Oklahoma* for six months after date of judgment. One may not remarry for six months after date of final decree in *Oregon*. *Pennsylvania* has no statutory restriction, except that an adulterer may not marry his accomplice during the lifetime of the innocent party. Remarriage is prohibited for six months after date of final decree in *Rhode Island*. *South Dakota* has no statutory restriction, except that adulterers may not remarry during the lifetime of the innocent party. There are no statutory restrictions in *Tennessee*, except that an adulterer may not marry his accomplice during the lifetime of the innocent party. *Texas* provides that, in case of cruelty, neither party may remarry for one year. In *Utah* a decree is not final for six months after date of judgment. A decree is not final in *Vermont* for six months after judgment; a guilty spouse may not remarry for two years. In *Virginia* neither party may remarry for six months after date of final decree. If adultery is the cause, the court may forbid the guilty party to remarry, but after six months from date of final decree this restriction may be waived. A decree is not final in *Washington* until six months after judgment. *West Virginia* provides that neither party may remarry for sixty days after date of final decree. The guilty party may be prohibited from remarriage for a period not exceeding one year. In *Wisconsin* a decree is not final until one year after date of judgment.

97. Q. May you secure a divorce from a husband who is in the army?

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A. Yes, if he is willing to give you one, and if you have sufficient cause. Otherwise, you had better forget about it.

98. Q. Can one in the armed service obtain a divorce?

A. Provided you have the necessary grounds, it is just as easy for a soldier to obtain a divorce as it is for a civilian.

FORM I

AN ANTENUPTIAL AGREEMENT OR MARRIAGE SETTLEMENT WHERE ALL PROPERTY IS TO BE HELD JOINTLY

This agreement entered into this fourth day of August, 19—, by and between John Doe and Jane Roe, witnesseth:

1. That the parties hereby agree to enter into the marriage relation and hereafter live together as husband and wife.

2. That all moneys or property hereafter acquired or accumulated by them, or either of them, shall be held in joint or equal ownership.

3. That each of the parties hereby grants, bargains, sells and conveys to the other an undivided one-half interest in all the property, real and personal, which he or she now owns, for the purpose and with the intent of vesting in both parties the joint ownership of all property at this date owned in severalty by either of them.

4. In case of the death of one of the above mentioned parties, all of said property shall, subject to the claims of creditors, vest absolutely in the survivors.

5. The consideration for this agreement is the marriage to be entered into pursuant to its terms and the mutual promises herein contained.

(seal) Jane Roe
JANE ROE

(seal) John Doe
JOHN DOE

Thomas Brown
WITNESS

FORM 2

SEPARATION AGREEMENT, ALLOWING THE WIFE AN ANNUITY DURING THEIR JOINT LIVES

Note: To be binding, this agreement must relate to a separation that has already taken place, or is to take place immediately. If it relates to a separation to take place some time in the future, the agreement is void as against public policy.

This agreement made this 31st day of July, 19—, by and between John Doe, husband, party of the first part, and Jane Doe, wife, party of the second part, witnesseth:

Whereas unhappy differences have arisen between the said husband and wife, by reason of which they have agreed to live separate and apart from each other for the future, and to enter into the following agreement contained herein, as follows:

1. It shall be lawful for the said wife, at all times hereafter, to live separate and apart from the said husband, and free from his marital control and authority, as if she were sole and unmarried, and to reside from time to time at such place as she may deem proper, without any interference whatever on the part of the said husband.

2. Neither of them, the said husband and wife, shall molest the other of them, nor compel, nor endeavor to compel, the other of them to cohabit or dwell with him or her by any legal proceeding for restitution of conjugal rights, or otherwise howsoever.

3. Neither of them, the said husband and wife, shall take any proceedings against the other of them to obtain a divorce or judicial separation in respect of any misconduct which has heretofore taken place, or is alleged to have taken place, on the part of the other of them.

4. The husband shall, during the joint lives of himself and the said wife, pay to her, the said wife, the sum of \$5,000 per annum as her separate estate, but so that she shall not have power to anticipate the same, in quarterly payments on the usual quarter days, the first payment to be made August 15, 19—.

5. All the wearing apparel and personal ornaments of the said wife, and all movable personal property belonging to the said wife, now in her possession, shall belong to the said wife as her separate estate, independently of the said husband. All the property of the said wife, both real and personal, now held by her, or which shall hereafter come to her, shall be and remain her sole and separate property, free from all rights of the said husband, with full power to her to convey, assign, or deal with the same as if she were single. The said husband will, from time to time, execute all deeds and papers as may be necessary to enable her to sell, assign, or deal with her said property.

6. On the death of the said wife in the lifetime of the said husband, all her separate estate, whether real or personal, which she shall not have disposed of in her lifetime or by will, shall, subject to her debts and engagements, go and belong to the persons or person who would have become entitled thereto if the said husband had died in the lifetime of the said wife.

7. If the said wife shall die in the lifetime of the said husband, he shall permit her will to be proved, or administration upon her personal estate and effects to be taken out by the persons or person who would have been entitled to do so had the said husband died in her lifetime.

8. The said wife shall have the sole custody and control of Mary and Tom, infant children, and of their education and bringing up, until they respectively attain the age of 16 years without any interference whatsoever on the part of the husband.

9. The said husband further agrees to pay unto the wife for the support and maintenance of the aforementioned children of the parties the additional sum of \$2,000 per annum, to be paid in quarterly installments, the first installment to be payable August 15, 19—, until each child reaches the age of 21 years, or remains unmarried.

10. The said husband and wife shall respectively, at all convenient and reasonable times, have access to and communication with the children or child for the time being living with or under the control of the other of them.

11. The said wife, her heirs, executors and administrators, shall at all times hereafter keep indemnified the said husband, his heirs, executors and administrators, from all debts and liabilities heretofore or hereafter to be contracted or incurred by the said wife, and from all actions, proceedings, claims, and demands, costs, damages, and expenses whatsoever in respect of such debts and liabilities, or any of them.

12. In case the said husband shall be obliged to pay any sum or sums of money for or on account of any debt or liability heretofore or hereafter contracted or incurred by the said wife, or in case the said wife shall at any time take any proceedings against him, the said husband, for restitution of conjugal rights or otherwise for compelling him to cohabit with her, or shall at any time directly or indirectly molest the said husband, then and in any such case the said annuity of \$5,000 shall cease to be payable.

13. In case the said husband shall at any time or times hereafter be called upon to pay or discharge, and shall actually pay or discharge, any debt or liability heretofore or hereafter contracted or incurred by the said wife, then and in every such case it shall be lawful for the said husband, at his option, instead of availing himself of the rights secured to him by the preceding paragraph, to deduct and retain out of the said annuity the amount which he shall have so paid, together with all costs and expenses.

14. Each of them, the said husband and wife, or their respective heirs,

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executors or administrators, shall at any time execute and do all such assurances and things as the other of them, his or her heirs, executors, administrators or assigns shall reasonably require for the purpose of giving full effect to these presents, and the covenants, agreements and provisions herein contained.

15. Provided always, and it is hereby agreed, that if the said husband and wife shall be reconciled and return to cohabitation, or if their marriage shall be dissolved, then and in such case all the covenants and provisions herein contained shall be void, but without prejudice to any act previously made or done hereunder, or any proceedings on the part of any of the parties hereto in respect of any antecedent breach of any of the covenants or provisions herein contained.

Witness our hands and seals this 31st day of July, 19—.

(seal) John Doe
HUSBAND

(seal) Jane Doe
WIFE

Tom Brown
WITNESS

FORM 3

BILL FOR ABSOLUTE DIVORCE ON THE GROUND
OF ADULTERY

John Doe
COMPLAINANT

CIRCUIT COURT

..

of

vs.
Jane Doe
DEFENDANT

Baltimore City

..

.....

To the Honorable, the Judge of Said Court:

Your Orator, complaining, says:

1. That he and the defendant were married July 15, 19—, in Baltimore, Maryland, in a religious ceremony.

2. That both your Orator and the Defendant have resided in the City of Baltimore, State of Maryland, for more than one year prior to the filing of this bill of complaint.

3. That one child was born of said marriage, namely, John Doe, Jr., whose age is six months.

4. That ever since their said marriage your Orator has behaved himself as a faithful, affectionate and kindly husband toward the said defendant.

5. That the said Defendant did on September 15, 1944 commit the crime of adultery with a person whose name will be revealed at the hearing of the above mentioned cause and that said adultery took place in the City of Baltimore, State of Maryland.

6. That your Orator has not lived nor cohabited with the said defendant since he has discovered the said adultery, nor has he condoned, connived, nor forgiven such adultery.

TO THE END THEREFORE:

(1) That your Orator may be divorced a vinculo matrimonii from the defendant.

(2) That your Orator may be permitted to have the custody of the said infant child.

(3) That your Orator may have such other and further relief as his case may require.

And as in duty bound, etc.

Samuel G. Kling

SOLICITOR FOR COMPLAINANT

John Doe

COMPLAINANT

CHAPTER III

Parent and Child

FOR THE MOST part, the relationship between parent and child is rooted in affection, and seldom does any question arise requiring litigation or the services of a lawyer.

When such questions do come up, they usually revolve around the child's obligation to support his parents rather than the other way around. It is rare, indeed, for a child to bring his parents into court for non-support. There are literally thousands of cases, however, where an indigent parent, unable to fend for himself, is forced to charge an ungrateful son or daughter with lack of support.

Some parents believe firmly in the old adage of sparing the rod and spoiling the child. A parent, of course, has a legal right to chastise his child, but such chastisement must not be excessive or the parent will be answerable to the court. Similarly, a parent must not neglect his offspring. He must support, educate and protect his child, and for any violation of this legal duty the parent may be indicted and convicted.

What follows is primarily concerned with the reciprocal rights, duties and obligations of parents and their children, and with such important matters as adoption, guardian and ward, and illegitimate children.

1. *Question:* Who is responsible for the support of the child?
Answer: The father.
2. *Q.* After the death of the father, who is responsible for the support of the child?
A. The mother, but she will not be held liable if the child has an estate or income of his own.
3. *Q.* May a parent refuse to support his child?
A. No. The child, or any other person acting on his behalf, may cause the parent's arrest for non-support.
4. *Q.* Suppose a father has insufficient means to support his child, and the child has property of his own. Is the father still liable for the child's support?
A. No.
5. *Q.* John's child is deeded a piece of property by his aunt. May John, who is in financial straits, dispose of his child's property?
A. No.
6. *Q.* Is a stepfather under any legal obligation to support his wife's children by a former marriage?
A. No, not unless he voluntarily assumes the burden by receiving the children into his family.
7. *Q.* Who is ordinarily entitled to the child's services and earnings?
A. The father.
8. *Q.* How may a child be released from parental control so as to be entitled to retain his earnings?
A. By the consent of the parents, either orally or in writing, or from the circumstances surrounding the case. A child is also entitled to retain his earnings where the parents fail to support him, when he attains twenty-one years, or, in some states, in the case of females, eighteen years, and finally, where the child contracts a valid marriage, either with or without the parents' consent.
9. *Q.* Does a child have to support his parents?
A. He has only a moral obligation to do so in most states, if he is under twenty-one. However, many, if not all, jurisdictions now recognize that a man over twenty-one has a legal obli-

gation to support parents who are too ill or too poor to support themselves. Most states, in fact, make the failure to support destitute parents a criminal offense.

10. Q. What obligation does a parent have to educate his child?
A. Formerly, none whatever. Now, by court decisions and state laws, a good common school education, at the least, is recognized as among a child's necessities, for which parents are liable.
11. Q. What duty does a parent have to protect his child against a third person?
A. It is universally held that a parent may commit assault and battery and, where necessary, may even kill another person in defense of his child.
12. Q. Does a father have any legal action where his daughter is seduced?
A. Yes. He may maintain a suit against the wrongdoer for the loss of service and incidental expenses. Damages may also be had for the disgrace, and for the corrupting example to his other children.
13. Q. Is a parent permitted to chastise his child?
A. Yes, but within reason. The rule of law is that to compel obedience a parent may discipline his child even to the extent of using a whip. However, the punishment must not be excessive for the offense or the parent will be answerable to the court.
14. Q. John wants to rear his son as a Protestant. Helen, his wife, wants him reared in the Roman Catholic Church. Legally, who will prevail?
A. John, the father.
15. Q. John's child, while playing with other children, pushes one of them off a porch, the youngster sustaining a broken leg. Is John liable?
A. No. A parent is not liable for the negligence of his child, unless committed in his presence or with his knowledge and consent.
16. Q. Is a parent responsible for the crimes committed by his child?
A. No, not unless he aids in their commission.

17. *Q.* A mother abandons her child for five years. The child is reared by strangers who have never legally adopted it. The mother now seeks to recover the custody of her child. Can she do so?
- A.* To regain her offspring the mother must prove that the restoration would benefit the child. Where the child forms such new attachments that a restoration to his parents would not serve his best interests, the real mother will be refused custody.
18. *Q.* What are the legal requirements for the adoption of a child?
- A.* To legally adopt a child it is necessary for the adopting parents—that is, those who want to adopt the child—to obtain the formal consent, expressed in writing and in the form required by law, of the child's natural parents, or other persons having the legal control of the child. It is usually necessary to obtain the consent of both natural parents where they are living together. Where they are living separate and apart, the consent of the one who has the legal custody of the child only is required. The same principle is applicable to the adopting parents. If the adopting parents are living together, the consent of both is usually required. Where they are living separate and apart, the consent of the adopting parent only is necessary. It is essential also that the adopting parents give evidence that they are of good character, are sober and industrious citizens of the community, and are financially and morally able to give the child the care and affection to which it is entitled. An additional requirement, applicable in cases where the infant child is fourteen years of age or over, is that the child give his formal consent to the adoption. All this is done in a court proceeding handled by attorneys for both sides.
19. *Q.* May your wife adopt a child without your consent?
- A.* Most states require that both spouses sign adoption papers. In Alabama, Alaska, Arizona, California, Idaho, Indiana, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, West Virginia and Wyoming it is possible for

one, the wife, to adopt the child without consent of the husband, but this will not place any legal obligations on the husband to support it.

20. Q. Is the consent of the child's natural parents necessary before adoption?

A. Yes, except in cases where the natural parents have abandoned the offspring or have been deprived of the child by legal proceedings.

21. Q. May a single woman adopt a child?

A. Yes.

22. Q. Can you adopt a person over twenty-one years of age?

A. Yes, in Colorado, Connecticut, Georgia, Iowa, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington and Wisconsin.

23. Q. What is the effect of legally adopting a child?

A. Adoption gives rise to the same duties, rights and responsibilities as that of a natural-born child.

24. Q. Who determines the domicile or residence of an illegitimate child?

A. The mother.

25. Q. Can a father be made to support his bastard child?

A. Yes, and he may be imprisoned if he does not.

26. Q. As between the father and mother, who is entitled to the custody and earnings of an illegitimate child?

A. The mother.

27. Q. May an illegitimate child inherit property?

A. In all states, now, bastard children may inherit from or through the mother, and may share and share alike with her legitimate children.

28. Q. What is a guardian?

A. A guardian is a person appointed by the court, or named in a will, who is entrusted with the care of another individual, usually under age or of unsound mind, and the management of that person's property.

29. Q. May a guardian be appointed for a child even where the father or mother is living?
- A. Yes, if the best interests of the child warrant it.
30. Q. Is a guardian permitted to retain custody of a ward to the exclusion of the child's parents?
- A. The custody of the ward will ordinarily be given to its guardian, both as against strangers and as against relations, with the exception of its parents. In the award of the custody of the child's person, even as between parent and guardian, the court will be largely influenced by the child's best interests. If a child, therefore, is awarded to a guardian, the parent or parents may, upon proper application, petition the court to reopen the question of guardianship.
31. Q. May a child, whose parents are dead, select his own guardian?
- A. Yes, if the child is over fourteen, and the choice is approved by the court.
32. Q. What conditions must the guardian meet before taking charge of a ward?
- A. He must notify the court of his acceptance, take the oath of office, and file a bond.
33. Q. Must a guardian maintain and support his ward out of his own pocket?
- A. No.
34. Q. May a guardian spend the principal of the ward's estate in furtherance of the ward's education and maintenance?
- A. Yes, but only with and by the approval of the court. Ordinarily, the guardian may use the income of the ward's estate, not the principal itself.
35. Q. Is a guardian, like a parent, entitled to his ward's services and earnings?
- A. No.
36. Q. Is a guardian entitled to charge his ward for food and lodging where the ward lives with him as a member of the family and there is no agreement to that effect?
- A. No.

37. Q. May a guardian direct the manner in which his ward shall be religiously reared?
A. Usually, the court insists that the ward be reared in the faith of his natural parents.
38. Q. May a guardian direct his ward's education?
A. Yes. The rule is that a ward shall be given an education suitable to his station in life, assuming, of course, that the ward's estate is ample for this purpose.
39. Q. A ward marries soon after a guardian for him is appointed. What happens to the guardianship?
A. In the case of a girl, the guardianship usually ends. In the case of a boy, the guardianship continues over his estate or property but not over his person.
40. Q. A guardian objects to the girl his ward is going with. May he forbid his ward to go out with her?
A. Yes, unless he is obviously unreasonable about it.
41. Q. What must a guardian do with his ward's funds?
A. He must invest them within a reasonable time or he will be charged interest.
42. Q. What must he do with his ward's real estate?
A. He must lease his ward's lands, keep the buildings in repair, and collect the rents.
43. Q. Does a guardian have power to sell his ward's real estate?
A. No. As a general rule, he can make such a sale only by virtue of some special authority—as, for example, the consent or approval of the court.
44. Q. A guardian, with permission of the court, puts up for sale, at public auction, a piece of property belonging to his ward. The guardian, as the highest bidder, buys the property. May he retain it?
A. No. A guardian is not permitted to purchase his ward's property at a sale.
45. Q. A guardian, having money in his possession belonging to his ward, invests it in speculative stocks. The stocks go up and the guardian realizes a profit of one thousand dollars. May he retain the profit?

- A. No. Guardians are not permitted to reap a personal advantage from using the ward's money. Any such profit must be returned to the ward.
46. Q. Suppose, in the above example, the guardian loses the money invested in the stocks. What then?
- A. He will have to restore it out of his own pocket and will probably be removed from the guardianship. To protect himself, a guardian should invest his ward's funds only in stocks or bonds approved by the court. Otherwise, he may be held liable for any loss.
47. Q. A guardian, acting in good faith, invests some of his ward's money in bonds which he considers to be safe. Later, the corporation goes into bankruptcy and the bonds prove practically worthless. Must the guardian make good the loss?
- A. No. A guardian is bound to exercise only ordinary care and prudence in the management of his ward's estate.
48. Q. How may a ward compel his guardian to give an accounting of the ward's property?
- A. Normally, a guardian is required to give the court two kinds of accounts: (1) an annual account of the ward's property, and (2) a final account upon the termination of the trust or guardianship. Where the guardian fails to file such an annual account, the ward may, by his attorney, go into court and compel the guardian to provide such an accounting.
49. Q. Are guardians compensated for their services?
- A. Yes, but only when they have faithfully executed their trust. The court fixes the amount the guardian is to be paid and this is deducted from the ward's estate.
50. Q. How may a guardianship be ended?
- A. 1. By the ward reaching his majority.
2. By the death of the ward.
3. By the death of the guardian.
4. By the marriage of a female ward.
5. By the guardian's resignation
6. By the removal of the guardian by the court.

FORM 4

AGREEMENT FOR ADOPTION OF CHILDREN

Note: Most states have statutes containing provisions for the adoption of children. Such statutes should be consulted and followed. An attorney should always be employed by the party seeking to adopt the child; it is well, too, for the other party to employ counsel so that there will be no uncertainty as to what is involved. The agreement which follows may be used in cases where it is not practical to make application through the courts.

This agreement made this First day of August, 19—, between Mary Smith, party of the first part, and John Doe and Jane Doe, his wife, party of the second part.

Whereas the party of the first part has one daughter, Ruth Smith, now three years old, and whereas the said parties of the second part are willing to adopt the said child, subject to the conditions hereinafter contained, and on the part of the party of the first part to be observed, now this agreement witnesseth that the said parties covenant and agree as follows:

1. The said parties of the second part shall adopt the said child and shall, until the said child attains the age of twenty-one years, or marry under that age, maintain, board, lodge, clothe and educate her in a manner suitable to her station in life, and as if she were the lawful child of the parties of the second part, and shall, at the cost of the parties of the second part, and of the survivor of them, provide the said child with all necessities and discharge all the debts and liabilities which the said child may incur for necessities, and indemnify the said party of the first part against all actions, claims and demands in respect thereof.

2. The said party of the first part hereby nominates and appoints the parties of the second part during their lives, and after their respective deaths, the person or persons to be nominated in their behalf, as is hereinafter mentioned, to be the guardians of the person and estate of the said child until she shall attain the age of twenty-one years, or until she shall marry under that age.

3. The said party of the first part shall not revoke the appointment hereby expressed to be made and will not, by deed, will, or otherwise, appoint or apply for the appointment of any other person or persons to be guardian or guardians of the said child or of her respective estate.

4. In case of the death of either parties of the second part before the said child shall attain the age of twenty-one years, or marry under that age, it shall be lawful for the survivor of them, the said parties of the second part, by deed or will, to nominate and appoint any person or persons from and after the decease of such survivor, to be guardian of the said child.

5. The said party of the first part shall not herself, nor shall any person or persons claiming under her, or acting under her authority, at any time or in any manner interfere with the training or management of the said child or with her moral, intellectual or religious education and instruction.

6. If the said party of the first part shall not perform and observe all and every one of the stipulations herein contained and on his part to be performed and observed, then and in every such case it shall be lawful for the said parties of the second part, and the survivor of them, by notice in writing under their, his or her hands or hand, and addressed either to the party of the first part or to the person setting up such claim or demand, or so interfering as aforesaid, to put an end to the agreement hereby expressed to be made, and thereupon the same shall absolutely cease; provided that in such event the said party of the first part or her estate shall be liable to pay and satisfy all debts and liabilities incurred by or in any wise for the benefit of the said child, which at the time of such termination of this agreement shall not have been paid and satisfied.

In witness whereof we have this first day of August set our hands and seals.

Mary Smith

PARTY OF THE FIRST PART

John Doe

PARTY OF THE SECOND PART

Jane Doe

PARTY OF THE SECOND PART

George Williams

WITNESS

CHAPTER IV

Personal Property

THERE ARE two classes of property, real and personal, and that which distinguishes one from the other is *mobility*. Land, houses, trees and farms are fixed and immovable and are called real property. A watch, a suit, a piano and an automobile, on the other hand, are movable objects readily transferred from one place to another. Such articles are called personal property.

Sometimes, as in the case of store or house fixtures, there is confusion as to whether an oil burner, for example, is real or personal property. If considered the former, it may not be removed from the premises by a tenant, even if he had it installed himself. If personal property, the tenant may take the oil burner with him—assuming, of course, that it was his in the first place.

An article, moreover, may be real property at one time and personal property at another time. A tree standing in its native soil is real property, but if you cut the tree down, and make a pile of wood or use the wood to make a table, it becomes personal property. Oil in the earth is real property, but if you extract it, you then have an article of merchandise, and the oil becomes personal property.

Personal property, too, may be transmuted into real property. Stones, bricks and mortar are all personal property—but build a house with them and you have real estate.

Since practically everything people own is classed as personal property, the importance of this subject is obvious. In the main,

this branch of the law deals with the often baffling question: who is the *legal owner* of a disputed piece of property?

Though the bulk of the present chapter is naturally concerned with resolving conflicting claims to such property, patents, trademarks and copyrights are also given the attention they deserve.

1. *Question:* You find a wallet containing money, but no writing which identifies the owner. Legally, must you advertise for the owner before you can consider the wallet yours?

Answer: No. The obligation is on the part of the loser to advertise for the finder of such property.

2. *Q.* While shopping in a grocery store, you notice a five-dollar bill lying on the floor. As you pick up the money, the storekeeper strolls over and asks you for the bill, on the ground that you found it in his store. May you keep the money or must you turn it over to him?

A. You may retain it, providing the real owner is not in the store to claim it. The law takes the view that the money has been lost, not mislaid, and that you have a better claim to it than anyone except the person who lost it. Should the owner later return to ask about the money, the grocer would not be responsible. However, if he has your name and address, he may refer the owner to you.

3. *Q.* While riding in a street car, you notice a purse on one of the seats. You pick it up and, as you are about to step off, the operator of the vehicle, having seen you take the purse, requests that you turn it over to him for safe-keeping. Must you do so?

A. Yes. Where property is mislaid on a chair or counter in a store, hotel or street car, the one in possession of the premises, in this case the street car operator, is the proper custodian of the mislaid article, not the person who chances to discover it.

4. *Q.* While walking through the woods with some friends, you stumble over a cardboard box. You and your friends take turns in kicking the box around until it bursts open and \$200 in bills come tumbling out. You claim possession of

the entire \$200. Your friends also claim a share. Who is entitled to the money?

- A. Legally, all of you are entitled to an equal share, in spite of the fact that you were the first one to notice the box. Had you opened the box yourself after stumbling over it, the money would have been yours.
5. Q. Jim finds a wallet in the street. The wallet contains \$15 in bills, together with a business card identifying the owner. Must Jim return the wallet?
- A. Yes. In some states the fact that Jim does not return the wallet, where means of identification are known, may make him guilty of the crime of larceny.
6. Q. Jim finds a wallet containing \$100 in bills, together with a card bearing the owner's name and address. Hurrying to the address stated on the card, Jim informs the owner that, for a reward of \$25, he will be glad to turn the wallet over to him. The owner refuses to offer any reward at all and threatens to call the police if Jim does not instantly deliver the wallet to him. What should Jim do?
- A. Jim should return the wallet to its owner. Indeed, if Jim refuses, the owner may properly have him arrested.
7. Q. A newspaper advertises the following: "Liberal reward will be paid to finder of diamond ring bearing the initials G. T. B. Address Box 124." Having found a ring answering this description, you hasten to the owner's address (which you have learned) and offer to return the ring for the promised reward. The owner offers you \$10, an amount which you do not consider liberal enough for the size of the diamond. You refuse to return the ring unless you are given a reward of \$50. What are your rights in the matter?
- A. None whatever. The offer of a "liberal reward" is often designed to cover up the fact that little or no reward will be given. Legally, the reward advertised must be a definite and specific sum before you can have a lien against it. Where a definite amount is not mentioned in the "ad," the person returning the lost article has no comeback.
8. Q. Jim buys a safe and sends it to a mechanic for repairs. The mechanic finds money in the safe. Who is entitled to the money, Jim or the mechanic?

- A. The mechanic, on the theory that the money was lost and that the finder, in this case the mechanic, has a better right to it than anyone else.
9. Q. Tom's sailboat, which was sunk a year ago, is raised from the sea by George who finds \$200 in a tin can hidden in the boat. Both Tom and George claim the money. Who is entitled to it?
- A. George, on the legal theory that Tom had abandoned it.
10. Q. Jim finds a pocketbook lying on the counter of a bank, but a bank teller claims it. Who is entitled to the pocketbook?
- A. The bank teller, on the theory that the pocketbook has not been lost but merely mislaid, thus giving the bank the right to hold it until claimed by the actual owner.
11. Q. Before checking his coat in a night club, Bill puts his gloves in the pocket. Later, the coat is returned to him but not the gloves. Is the owner of the check room responsible?
- A. No, since the gloves were concealed in the coat. The theory is that the check room attendant did not see the gloves being placed in the pocket of the coat; therefore, he would be responsible only for the safekeeping of the coat. Had the attendant seen the gloves placed in the coat, the check room owner would then be responsible for the gloves as well.
12. Q. You park your automobile in Jackson's parking lot, paying thirty-five cents for the privilege, and receive a ticket which states that the ticket must be surrendered before the car can be taken away. At the request of the parking lot attendant, you leave the ignition key in the car. Later, when you return for the car, you find that it has been stolen. Is Jackson, the owner of the parking lot, liable?
- A. Probably. There are two theories of liability. One is that you merely rented parking space, in which case Jackson would not be liable for the theft of the automobile. The other theory is that the transaction amounted to a "bailment," in which case Jackson would be under a duty to exercise reasonable care. His failure to return the car would establish a "prima facie" (at first blush) case of liability on

Jackson's part. In the present example, the fact that the key was left in the car lock, so that control of the car was surrendered to Jackson, would be strong evidence to hold Jackson liable.

13. Q. Henry goes into a restaurant for lunch. He hangs his hat and coat on a hook. When he finishes his meal, the coat is missing. May Henry recover the value of the coat from the restaurant owner?
- A. No. The coat had not been placed under the care of the restaurant owner or a waiter. A waiter is not expected to stand guard over unchecked coats and hats hung on hooks about the room.
14. Q. You deposit a suitcase in the parcel room of a railroad station, receiving a check upon which is printed a notice that the railroad's liability for loss is limited to \$25. When you call for the suitcase, you are told that it is missing. Actually, the contents and case are worth \$250. You have never read the printed notice. May you recover the value and contents of the case instead of \$25?
- A. Yes. Failure of the station master to return your luggage charges him with negligence. It is true that parties to a contract may generally limit liability. But without your actual assent, such agreement is not binding. The fact that you failed to read the printed notice indicates that you never gave your approval to such agreement and hence will not be bound by it.
15. Q. Mary, before trying on a new coat, lays her own coat on a chair in the presence of the clerk. The coat is stolen. Is the store liable?
- A. Yes, because the clerk witnessed the placing of Mary's coat on the chair and therefore assumed responsibility for it.
16. Q. Jim's garage has a sign posted on the wall which says: "Not Responsible for Damage to Automobiles Entrusted to Our Care." Jim has never read the sign. May he recover against the garage owner for damage done to his automobile by one of the help?
- A. Yes. Unless Jim has actually read the notice, he is not bound by it. The question of whether he did or did not actually

read the sign then becomes a question of fact to be determined by a jury, or by the court sitting as a jury.

17. Q. Dick leaves some garments at a dry cleaning establishment. He is given a receipt which, on the back, states that in the event of loss, the cleaner will have to pay only ten times the cleaning charges rather than the actual value of the garments. The garments are lost. Is Dick bound by the receipt, assuming that he has not read it?

A. No. See Question 14.

18. Q. Jim registers in a New York hotel, taking to his room several valuable diamond rings and watches. The hotel has posted notices stating that it has provided a safe for the deposit of valuables. Is the hotel responsible if the jewelry is stolen from Jim's room?

A. No. In New York and other states where such notices are posted, the failure of the guest to deposit valuables in the designated safe relieves the hotel of liability. Here, the question is one of statute law. Jim may not plead ignorance, since ignorance of the law is no excuse.

19. Q. A railroad posts a notice stating that it will not be liable as an insurer for more than \$1,000. Jim reads the notice and ships goods worth \$5,000. The goods are destroyed in transit. Is the railroad responsible for more than \$1,000?

A. Yes. A railroad may not limit its liability by posting a general notice, even though the shipper reads it.

20. Q. Jim delivers a cargo of dairy products for shipment over the railroad. The goods are spoiled in transit because no ice has been provided for their preservation. Is the railroad responsible for the loss?

A. Yes. A railroad must exercise the reasonable care consistent with the nature of the goods it undertakes to handle.

21. Q. Jim delivers fruit to the railroad for shipment to Harry in New Haven. The fruit is transported to New Haven and placed in a warehouse. Before Harry calls for the fruit it is destroyed by rain which comes through a defective roof in the warehouse. Is the railroad responsible?

A. Yes. A railroad must keep the goods in a safe place until called for.

22. *Q.* Harry goes to a hotel, hands his luggage to a porter, then goes to eat lunch in the grill. His luggage is misplaced and cannot be found. Is the hotel liable?
- A.* Yes. Harry is a guest, in spite of the fact that he did not sign the hotel register. When the porter took charge of his luggage, Harry became a guest of the hotel—at which point liability on the part of the hotel begins.
23. *Q.* You spend a week in a hotel, then find you lack sufficient funds to pay your bill. May the hotel retain your luggage as security for the hotel bill?
- A.* Yes. Upon payment of the bill, the luggage must be released. After providing proper notice, the hotel may even sell the luggage in order to secure payment of the bill.
24. *Q.* George delivers a coat to his tailor for repairs. When the work is completed, George refuses to pay the bill on the ground that the charge is exorbitant. May the tailor sell the coat to obtain his charges?
- A.* No. The tailor has only the right to retain possession of the coat until he is paid or some agreement is reached.
25. *Q.* Jack is called to Harry's house to repair the latter's piano. Harry refuses to pay Jack for his services, claiming the bill is exorbitant. Does Jack have a claim on the piano?
- A.* No. As the piano was always in Harry's custody, Jack lacks the possession required for such claim. He can, however, sue Harry for services rendered.
26. *Q.* You take your suit to a cleaner. You later lose your receipt for this suit, and it is found by a stranger who presents it to the cleaner and obtains the suit. May you recover the value of the suit from the cleaner?
- A.* Yes. The cleaner is under a strict obligation to make certain that the right suit is turned over to the right owner.
27. *Q.* You deliver an overcoat to a cleaner who agrees to clean, repair and deliver the garment to you by Tuesday of the following week. The garment is not delivered on time. Do you have a claim against the cleaner?
- A.* Yes. The failure to deliver on time constitutes a breach of contract. The question then resolves itself to one of credi-

bility—that is, whether the cleaner is to be believed or the person delivering the overcoat. The burden of proof, as in all damage suits, is on the plaintiff, the party suing, to make out a case. Naturally, the plaintiff makes out a stronger case if he can corroborate his story by means of a witness, where there is no written evidence to support his claim.

28. *Q.* A tailor takes in a suit for cleaning, to be delivered when finished. He sends his employee to deliver the suit, and the latter disappears, taking the suit with him. The customer demands a new suit. Does he have a claim?
- A.* Yes, on the theory that a breach of contract has been committed.
29. *Q.* Bill, accompanied by a friend, leaves some laundry in a drop box outside a laundry establishment. The bundle contains shirts, hose, handkerchiefs and collars. When Bill comes to call for the finished work, he is told that the laundry never received it. May Bill collect the value of his laundry?
- A.* Yes. If Bill testifies that he dropped the bundle in the drop box and his testimony is corroborated by his friend, he has established a strong case which will be difficult to defeat. The fact that the box is there is an implied invitation to drop bundles in it, and the laundry assumes responsibility. If Bill had no witness, his case would be that much weaker.
30. *Q.* Your laundry leaves your bundle outside your apartment door. The bundle is stolen. Is the laundry responsible?
- A.* Yes, unless you have given instructions for the bundle to be left outside. In that event, you assume the risk; otherwise, the laundry does.
31. *Q.* A customer leaves some bundles at his laundry. Later, the establishment is broken into and the laundry stolen. Is the laundry owner liable?
- A.* No, not unless you can prove that the theft was due to the laundry's negligence. Showing that the laundry carelessly left the door open at night might suffice.
32. *Q.* A fire breaks out in the laundry, destroying all the garments, including your own. Is the laundry responsible?

- A. Not unless you can prove that the fire was caused by the laundry owner's negligence. A laundry is not an insurer against theft or loss by fire.
33. Q. Henry rents a safe deposit box in a bank, placing five War Bonds therein. The bank gives Henry one key, retaining the master key itself, both being necessary to open the box. Burglars enter the vault, break open Henry's safe deposit box, and take his Bonds. Can Henry recover the value of the Bonds from the bank?
- A. No. If the bank exercises reasonable care, it is not liable; it does not guarantee loss of property against theft.
34. Q. A friend of yours, a watchmaker, undertakes to repair your watch free of charge. He does it so carelessly, however, that it is damaged. Is he liable?
- A. Yes, irrespective of whether he was to be paid or not.
35. Q. Mary borrows Jane's automobile. While the car is in Mary's garage, it is struck by lightning and is totally destroyed. Is Mary liable?
- A. No. While Mary owes the highest degree of care towards the automobile, she is not liable for loss not caused by her negligence.
36. Q. Jim erects a ten-story brick building upon his land. He sells the land to Dick. Jim claims title to the building. Is he right?
- A. No. A sale of the land passes title to Dick, not only to the land, but also to the building on it.
37. Q. A tenant installs a new electric light fixture in his apartment. Upon the termination of the lease, he desires to take the fixture with him. The landlord protests, on the ground that the removal of the fixture will ruin the wall paper. Who is entitled to the fixture?
- A. The tenant. The general rule is that unless the fixture is so firmly attached as to be incapable of removal without great injury to itself or the landlord's property, it may be removed by the tenant. Hangings, tapestry, window blinds and curtains, stoves, cupboards, sheds, grates, steam radiators and their valves and electric refrigerators may be removed by the tenant—assuming, of course, that they are his own.

38. Q. Jim promises Alice a ring for her birthday. Jim buys the ring in Alice's presence; but later, he changes his mind and gives the ring to someone else. Does Alice have a legal claim to the ring?
- A. No. Until the ring is actually delivered to Alice, Jim has a perfect right to change his mind as often as he pleases.
39. Q. Bill writes a number of letters to his wife, saying that he is giving her certain furniture, at the time stored in a warehouse. Bill later changes his mind, refusing to turn over the furniture to his wife. May he be compelled to carry out his promise?
- A. No. There was no gift because there was no delivery. Had he delivered the furniture, there would have been a valid gift and Bill would not later have been able to secure the furniture.
40. Q. Having had a heart attack and expecting to die, Tom gives George his automobile. Tom recovers, goes about his business, and dies eight months later. Tom's estate now claims the automobile. Does George have to give it up?
- A. Yes. Tom's recovery automatically revokes the gift; Tom's estate may rightfully claim the car. Had Tom died within a few days after giving the automobile to George, it would have been a valid gift and George could then have kept it.
41. Q. John has money and bonds in a metal box. He delivers the box to Paul, telling him that he is about to go to the hospital for a serious operation and that, if he should die, Paul is to keep the box. John's operation is successful. Shortly thereafter, however, he dies suddenly of a disease other than that for which the operation was performed. May Paul retain the box?
- A. Yes. John's gift is called "causa mortis," or on account of death, and is completed with John's delivery of the box and contents. In such gifts it is not necessary that John, the donor, die of the disease from which he apprehended death. A gift of this sort is recognized where death is anticipated from an impending disease or peril. The theory is that it enables the donor to dispose of personal property under circumstances which make the writing of a will impracticable,

yet enables the donor to regain title of the thing or article disposed of in the event he recovers.

42. Q. Tom is engaged to Alice. In anticipation of the marriage he gives her jewelry, furs and a diamond engagement ring. Alice breaks the engagement and marries another man. May Tom get back his gifts?
- A. Yes. Such gifts are legally said to have been made upon condition that the marriage takes place. Should the marriage not take place, Tom may recover the presents.
43. Q. James gives Dorothy a wrist watch for a Christmas present. Later, after a quarrel, James demands the return of the watch. Must Dorothy give it up?
- A. No. Such a gift is made merely to secure the lady's favor and is an unconditional gift.
44. Q. You sign a pledge to give a church or charity a fifty-dollar contribution. May this promise be legally enforced?
- A. No, not unless the church or charity incurred obligations on the strength of your promised contribution. If it did, your promise can be legally enforced.
45. Q. You want to change your name from John Slovensky to John Smith. May you do so without going into court?
- A. Yes. You may change your name as often as you like, so long as there is no intention to defraud.
46. Q. What objects may be patented?
- A. The Federal Law provides that "any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country and not patented or described in any printed publication in this or any other foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by the law, and other due proceedings had, obtain a patent therefor."
47. Q. In an invention or discovery, what two things are essential before a patent will be granted?
- A. It must have novelty and utility or usefulness.

48. *Q.* How do you go about obtaining a patent?

A. The inventor or discoverer must make written application to the Commissioner of Patents in Washington, D. C., and file what is known as a "specification," or written description of the invention or discovery, "and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same." It is further provided that "in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions, and shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery."

49. *Q.* What is the next step after this?

A. This "specification" and claim must be signed by the inventor and witnessed by two persons. The applicant must also furnish a drawing, specimen or model to illustrate his claim; finally, he must make oath that he believes himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition or improvement for which he seeks a patent; that he does not know and does not believe that the same was ever before known or used; he must also state of what country he is a citizen. All this information, together with the necessary fees, is filed with the Patent Office in Washington, usually through an attorney. A patent is then granted if it appears that the claimant is entitled to one.

50. *Q.* Who issues patents?

A. They are issued in the name of the United States of America, under the seal of the Patent Office, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents.

51. *Q.* For how long a period are patents issued?

A. Patents are granted for the term of seventeen years to the patentee, i.e., the person who applies for the patent, giving him the exclusive right to make, use and sell the invention

or discovery throughout the United States and its territories.

52. Q. Suppose the inventor dies before the patent is issued but after application is made?
- A. The right to apply for and obtain the patent passes to the heirs of the patentee.
53. Q. May a patent be assigned or transferred by the inventor to a third party?
- A. Yes. Not only the patent, but any legal interest in it may be assigned or transferred to a third person, provided the assignment is made in writing. As a precaution and protection, such assignment should be recorded in the Patent Office within three months from its date.
54. Q. What should an inventor do who wants time to perfect or complete an invention, but who has not yet obtained a patent to it?
- A. He should file a "caveat" with the Patent Office, setting forth the design of the invention, and requesting protection of his right until he shall have matured his invention. This caveat is then filed in the confidential archives of the Patent Office. Its effect is to protect the inventor, for one year, against applications which might, in the meantime, be presented by other persons.
55. Q. What happens when two persons file an application for a patent for the same invention, and both inventions are pending in the Patent Office at the same time?
- A. The Commissioner of Patents may compel the two interested persons to appear before him and offer evidence as to who was really the first inventor.
56. Q. What is meant by copyright?
- A. Copyright is the sole right granted the applicant to print, publish, or sell one's literary, musical, or artistic compositions. The law provides that the application for copyright shall specify to which of the following classes the work belongs: (a) books, including composite or other cyclopedic works, directories, gazeteers, and other compilations; (b) periodicals, including newspapers; (c) lectures, sermons, addresses prepared for oral delivery; (d) dramatic or dra-

matic-musical compositions; (e) musical compositions; (f) maps; (g) works of art; (h) reproductions of works of art; (i) drawings of plastic works of a scientific or technical character; (j) photographs; (k) prints and pictorial illustrations; (l) motion picture plays; (m) motion pictures other than motion picture plays.

57. Q. How do you go about securing a copyright?

A. First, print the work with the copyright notice printed on it—for example, "Copyright, 1945 by John Smith"; or, in the case of works specified above, (f) to (k), the notice may consist of the letter C enclosed in a circle, thus (C), accompanied by the initials, monogram or symbol of the owner—provided his name appears on some accessible part of the copies.

Second, send to the Register of Copyrights, Library of Congress, Washington, D. C., two copies of the work, together with an application for registration. The copies deposited must be accompanied by an affidavit, stating that the typesetting, printing and binding of the book, etc. have been performed within the United States.

58. Q. Where do you secure such affidavit forms and application blanks?

A. From the Copyright Office, Library of Congress, Washington, D. C.

59. Q. For what period of time does a copyright protect the author or owner?

A. Twenty-eight years. However, within one year prior to the expiration of the twenty-eight years, the owner, or his next of kin, may secure a renewal for a further term of twenty-eight years.

60. Q. What is the fee for a copyright?

A. Two dollars. This includes the certificate from the Register of Copyrights under seal.

61. Q. May a copyright be assigned to another?

A. Yes, provided the assignment is in writing.

62. Q. What is a trademark?

A. A trademark is a distinctive word, emblem, symbol or device, or a combination of these, used on goods actually sold

in commerce to indicate or identify the manufacturer or seller of the goods.

63. Q. Where are trademarks registered?
A. With the Commissioner of Patents, Patent Office, Washington, D. C.
64. Q. How do you get a trademark registered?
A. Under the law, the Commissioner of Patents is required to establish classes of merchandise for the purpose of trademark regulation and registration. There are forty-nine different classes. One application for the registration of a trademark will cover only goods belonging to one class. If the applicant desires to register his goods for trademark under any other class, he is required to file another application.
The fee is \$10 with each application.
The application must consist of a drawing of the trademark to be registered, made in India ink on sheets of Bristol board of a particular size and shape.
Five specimens or facsimiles of the mark must be filed with the application, together with the applicant's affidavit. After the registration is filed it is examined, and if it appears to the examiner to be a mark that can properly be registered, the Commissioner of Patents gives public notice in the Official Gazette for Registration that such a mark has been applied for.
65. Q. For how long a period is a trademark registered?
A. Twenty years; and it may be renewed.

FORM 5

ASSIGNMENT OF INTEREST IN PATENT

Note: To protect himself, the person to whom the patent is assigned should have it recorded in the Patent Office within three months from the date of the agreement.

Whereas I, John Doe, of New York City, did obtain letters patent of the United States for an improvement in the mechanism of a washing machine, which letters patent are numbered _____, and bear date the 15th

day of September, 19—, and whereas I am now the sole owner of said patent and of all rights under the same, and whereas Thomas Brown of New York City is desirous of acquiring the entire interest in the same, now therefore to all whom it may concern, be it known that for and in consideration of the sum of ten thousand dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said John Doe, inventor, have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said Thomas Brown, purchaser, the whole right, title and interest in and to the said improvement in the washing machine, and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said Thomas Brown for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assugment and sale not been made.

In testimony whereof I have hereunto set my hand and seal this 10th day of November, 19—, in the presence of the two witnesses whose signatures appear below.

John Doe

JOHN DOE

Richard Roe

WITNESS

Louis Gold

WITNESS

FORM 6

PETITION AND STATEMENT FOR AN INDIVIDUAL APPLYING FOR A TRADEMARK, INCLUDING OATH OF INDIVIDUAL MAKING APPLICATION

To the Commissioner of Patents:

John Doe, a citizen of the United States of America, residing at New York City in the state of New York, and doing business at 122 Fifth Avenue, has adopted and used the trademark shown in the accompanying drawing for canned fruits and vegetables in Class ———, Food and ingredients of foods, and presents herewith ——— specimens or facsimiles showing the trademark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of ——— day of ———, 19—, as amended. The trademark has been continuously used and applied to said goods in applicant's business since January 4, 19—. The trademark

is applied or affixed to the goods, or to the package containing the same, by placing thereon a printed label on which the trademark is shown.

John Doe

APPLICANT'S FULL SIGNATURE

State of New York

City of New York

John Doe, being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes himself to be the owner of the trademark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trademark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trademark is used by him in commerce among several States of the United States (and between the United States and foreign nations or Indian Tribes); that the description and drawing presented truly represent the trademark sought to be registered; that the specimens (or facsimiles) show the trademark as actually used upon the goods.

John Doe

FULL SIGNATURE OF APPLICANT

FORM 7

ASSIGNMENT OF A COPYRIGHT OF A BOOK

Note: The person or firm receiving such an assignment should have it recorded with the Register of Copyrights within three months after the date thereof.

This agreement made this 15th day of July, 19—, between John Doe, called the vendor, and the Blank Publishing Company, called the vendee, or purchaser, to wit:

Whereas the said vendor is the author and absolute proprietor of the copyright of a book entitled "**YOUR LEGAL RIGHTS**," and has agreed with the said purchaser for the absolute sale to him of the said copyright, free from incumbrances, at the price of _____ dollars;

Now this agreement witnesseth, that in pursuance of the said agreement, and in consideration of the sum of _____ dollars by the said

purchaser to the said vendor now paid, the receipt of which is hereby acknowledged, the said vendor hereby assigns, and, as absolute owner, conveys unto the said purchaser, his executors, administrators and assigns, the unincumbered copyright of and the sole privilege of printing all the said book or work entitled "**YOUR LEGAL RIGHTS,**" and all future impressions of said work. To have, hold, exercise and enjoy the said copyright and premises unto the said purchaser, his executors, administrators, and assigns, henceforth during the residue of the term of the said copyright now unexpired, for his and their own use and benefit, but subject always to such right as may now be subsisting in the publisher or proprietor of the last edition of the said book or work to prevent the publication of any future edition of the same until such last edition shall be out of print.

Witness our hands and seals.

(seal) Blank Publishing Co.

PURCHASER

(seal) John Doe

VENDOR

CHAPTER V

Contracts

THE LAW OF CONTRACTS is an integral part of the commercial world. Indeed, it is virtually impossible to transact any business without agreements, oral or written.

A verbal contract is a cultural hang-over from the days when our ancestors could neither read nor write. Today, while such contracts are in many cases perfectly binding, the prudent business man will invariably reduce them to written form. He should do this as a matter of self-interest, so that when disputes arise he may refer directly to the written instrument containing the terms agreed upon in a permanent form. It is bad enough when a question of interpretation comes up. Think how much worse it is when there is not even a writing to refer to!

The chief disadvantage of an oral contract, then, is that it is so difficult to prove. Courts, in such cases, have only the word of one interested person against that of another, and a stalemate is apt to result. To make certain that a verbal agreement is carried out according to the terms originally agreed upon, it is wise to have a witness present at the time the contract is made.

Breaches of contract occur, of course, irrespective of whether they are oral or written. Courts are cluttered with such cases. The plaintiff, the party suing, comes to court demanding damages for the broken contract. With the burden of proof upon him, the plaintiff must show not only that the contract has been breached, but that he has sustained damages as a result. The defendant, the

party being sued, on the other hand, comes to court prepared to prove that he lived up faithfully to his agreement, or, if he did in fact break it, that he did so for good and sufficient reasons.

This chapter contains basic information on the making of a valid contract, its essential elements, the rights and obligations of the parties thereto and, finally, how such an agreement may be dissolved.

1. *Question:* What is a contract?

Answer: A contract is an agreement between two or more persons to do or not to do a particular thing.

2. *Q.* What are the essential elements of a binding contract?

A. There must be, first, the consent or agreement of two or more persons expressed by the offer of one of the parties and the acceptance of that offer by another. For example, an offer is made to me by a publisher to write a book. I accept the offer.

Second, there must be a definite object which constitutes the subject matter of the agreement; in this case, the book. Third, the agreement must be based upon a consideration; that is, the price, motive or inducement for the contract. In this case, the consideration would be the amount of money I receive for writing the book.

Fourth, the persons who make the promise must be legally capable of entering into that particular kind of contract. Since the publisher is of legal age and I am over twenty-one, we can enter into such an agreement.

Fifth, the consent of the parties must be real and genuine. The persons making the promise must mean what they say; their consent must not be secured by fear, fraud or error. The publisher, for example, must enter into his part of the bargain freely, really expecting to publish the book according to the terms of the contract. As the author, I must write the book and deliver it in accordance with the terms of the written contract. Both of us must enter into the agreement without any fraudulent intent or misrepresentation.

Finally, the subject matter of the agreement must be lawful. The publishing of a book on law is lawful.

3. Q. What contracts are required to be in writing?

A. (1) *A special promise by an executor or administrator to pay damages out of his own pocket rather than the estate over which he is administering.*

Suppose, for example, you are the administrator of your father's estate. Someone has a claim against your father and is pressing you, as his administrator, for payment. If you want to assume the obligation yourself, you must agree in writing to pay the claim. Otherwise, you are not bound.

(2) *Any promise to answer for the debt, default or mis-carriage of another.* For example, you promise to pay your friend's debt. To make you liable, your promise must be in writing. A verbal promise will not bind you.

(3) *Agreements made in consideration of marriage.* Thus, a verbal promise made before marriage to make a settlement after marriage is unenforceable. The promise must be in writing. For example, you are planning to marry Tim who promises to settle \$5,000 on you after marriage. For this promise to be binding, Tim must put it in writing.

(4) *Contracts for the sale of land or real estate or any interest in them.* However, a contract for the erection of a building is considered a contract for work and material, not for an interest in land, and need not—though for practical purposes it always should—be in writing.

(5) *Agreements not to be performed before one year from the making thereof.* For example, you promise to sell your car to someone a year from now, at a certain price and under certain conditions. To be binding on you, that promise must be in writing.

4. Q. What should one look for in examining a contract?

A. The chief thing is to make certain that the written contract embodies *all* the terms agreed upon by the parties. Everything that is agreed upon verbally should be included in the written instrument. The contract should be definite and precise, and should contain a clear, intelligent statement of the terms. Beware of vague or ambiguous words or phrases. Finally, and most important, when in doubt as to whether the written agreement correctly and accurately expresses your conception of the contract, *don't* sign! Instead, consult your lawyer.

5. Q. For what contracts are infants, i.e., those under twenty-one years of age, liable?
 - A. Generally, they are liable for such necessities as food, shelter, clothing, medical and dental care, and education suitable to their station in life. Only the reasonable value of the necessities purchased by them can be recovered, not the contract price.
6. Q. Janet, who is eighteen, contracts to buy an automobile. She pays \$200 down and gives notes for the balance. After driving the car for a few weeks, she returns it to the dealer and demands her money back. May she recover it?
 - A. Yes, an automobile is not considered a necessity; being under twenty-one, Janet may avoid the agreement.
7. Q. Bill, age twenty, buys a motorcycle on the installment plan, after paying part of the purchase price as a down payment. Unable to maintain the installment payments, Bill defaults and the motorcycle is taken from him. What can he do?
 - A. He may recover the down payment, as well as any installments he may have made. Had he been twenty-one or over, all the money would have been lost and a judgment could be entered for the balance of the installments yet due.
8. Q. Ed, who falsely represents himself to be twenty-three but who is actually nineteen, purchases an automobile on the installment plan. When he fails to make his payments, the car is seized by the finance company which files suit for the balance of the installments. May the finance company recover?
 - A. No. Most courts hold that an infant is not liable when he falsely represents himself as being of age. Ed, therefore, may demand all his money back, including the down payment.
9. Q. Ted, age twenty, buys a wrist watch on the installment plan. After he reaches twenty-one, he wishes to return the watch and get back the money he has paid. Can he do so?
 - A. Yes. He has the privilege of either affirming or disavowing the contract when he reaches his majority.
10. Q. Is a lunatic liable for his contracts, including necessities?
 - A. No. The contract may be avoided by the lunatic when he recovers his reason, or by the committee appointed by the

court to care for him. However, a contract entered into by a lunatic with a person unaware of his condition will not relieve the lunatic of liability unless he returns the article or merchandise involved.

11. Q. A drunkard goes into a pawn shop and buys a diamond ring for which he pays \$500. Next day, when sober, he seeks to return the ring and obtain his money. Can he legally do so?
- A. Yes. A contract made by a person so intoxicated at the time as not to know what he is doing may be avoided at his option.
12. Q. You are sent Christmas seals which you do not use. Are you obliged to pay for them?
- A. No. Legally you are under no obligation to return them either, for you never accepted the offer.
13. Q. A tie company sends you a half-dozen ties which you use, knowing that the manufacturer expects payment for them. Are you under any obligation to pay for them, assuming that you never ordered them in the first place?
- Q. Yes. The use of the ties constitutes the acceptance of the offer. However, if you had not used them you would not be required to either return or pay for them.
14. Q. A publisher of a magazine notifies you that your subscription will be renewed unless he is notified to the contrary. You do not answer his letter and he continues to send you the magazine. Are you obliged to pay for the periodical?
- A. No. Since you did not ask for the renewal, you are neither obliged to pay nor to be put to the trouble or expense of returning the magazine.
15. Q. Tom writes Henry: "I offer to sell you one hundred shares of stock at fifty dollars per share, and unless I hear from you by next Tuesday I shall conclude that you have accepted my offer." Tom receives no word from Henry. Is there a contract?
- A. No. Henry is under no obligation to get in touch with Tom.
16. Q. A bookseller's catalog, with prices stated alongside the titles of the books, is sent through the mails. A dozen requests come in for a first edition of "David Copperfield."

May the bookseller refuse to sell the book to any of the twelve individuals?

A. Yes. A catalog is an invitation to do business but is not a legal offer to sell.

17. Q. Jones, a manufacturer, sends a circular letter to a jobber which reads as follows: "We have prepared and are sending under this cover a printed document setting forth the terms and conditions on which Jones Bicycles will be supplied to the wholesale trade. Hereafter, no order will be filled except on the terms set forth in the enclosed document." The jobber sends in an order for bicycles on the terms stated, but the manufacturer refuses to fill it. May the jobber insist that the order be filled?

A. No. Such circulars are not considered offers to sell; they are merely *invitations* for orders which the manufacturer may fill or not, as he pleases.

18. Q. Smith offers by letter, dated June 28th, to purchase shares in the Stonewall Hotel Company. No answer is given him until November 15th when he is informed by the company that shares are allotted him. Must he take the shares?

A. No. More than a reasonable time has elapsed between the offer and acceptance, and the original offer is considered revoked. What constitutes a reasonable time is usually a question of fact to be determined by a jury.

19. Q. The Smith Fertilizer Company agrees by letter to sell some fertilizer to Farmer Harrison, at a stipulated price. It is decided by the parties that a written contract should be executed by them, embodying the terms already agreed upon. Shortly afterward, The Smith Fertilizer Company writes Farmer Harrison, enclosing the formal written contract with the request that he sign and return it, stating that, upon receipt, The Smith Company will forward a properly executed duplicate. Farmer Harrison signs the contract and returns it to the company which subsequently refuses to sign, or deliver the promised duplicate, and repudiates the agreement. Is The Smith Company compelled to carry out its agreement?

A. Yes. It will be bound by the original letter containing the terms of the agreement.

CONTRACTS

20. Q. Benson gives a letter to Cummings, addressed to Brown. In effect, the letter states that Cummings wants to purchase \$2,500 worth of furniture and that if Brown extends the credit, Benson will guarantee payment of the bill. Cummings presents the letter on July 15th, and Brown sells and delivers the furniture. That same day, Benson discovers that Cummings is heavily in debt and immediately writes to Brown, withdrawing his offer. On July 16th, Brown dictates a letter to Benson advising him of the sale in reliance of the latter's guaranty, but before the letter can be typed, Brown receives Benson's letter of revocation. Brown sends the letter to Benson as dictated. Is Benson liable?
- A. Yes. The offer of guaranty became binding when Brown extended the requested credit. Since Brown accepted and completed the sale before Benson's letter of revocation was received, the revocation is ineffective.
21. Q. The X Company, writing from London on October 1st, makes an offer to the Blank Manufacturing Company in New York, asking for a reply by cable. The Blank Company receives the offer on October 10th and at once accepts in the manner requested. On October 8th, however, the X Company mails a letter revoking the offer. Is the X Company bound by the original offer?
- A. Yes. The fact that the Blank Company accepted the offer, before receiving notice of revocation, makes it a binding agreement. In this case, the offer was accepted on October 10th and the contract went into effect as of that date.
22. Q. Smith, in Louisville, mails a letter accepting an offer received by mail from Brown in Baltimore. A day before Brown receives the letter, Smith wires Brown that the letter is on its way, stating that, having changed his mind, he is countermanding his acceptance. Is Smith liable?
- A. Yes. Since the offer was sent by mail, the acceptance became effective—and a contract created—when the acceptance was mailed.
23. Q. Without previous negotiations, the Jones Fur Company has several times sent shipments of fur skins to Fisher, who, each time, accepted and paid for the skins. The Jones Fur Company again sends Fisher a shipment of skins. This time,

Fisher finds them unsatisfactory, lets them lie in his warehouse for several months and takes no steps to notify the Jones Company. While in the warehouse, the skins are destroyed by accidental fire. The Jones Fur Company now sues Fisher for the market price of the skins. Can it recover?

- A. Yes. Previous dealings between the parties impose a duty on Fisher to promptly notify the seller as to whether or not he is going to keep the skins.
24. Q. A newspaper advertises a subscription contest, offering to give cash prizes to the winners. The rules governing the contest are stated and the right to amend the rules reserved. Tom, as a contestant, sends in some subscriptions. At the beginning of the last week of the contest, the newspaper publishes a notice that henceforth only certified checks or money orders will be received for subscriptions. Later that same day, Tom, unaware of the change in the rules, sends in some additional subscriptions accompanied by checks which are not certified. The checks are accepted and cashed, but are not credited to Tom in the contest. Tom receives third prize, but he would have won first prize if he had been credited with all his subscriptions. If he sues, can he collect first-prize money?
- A. Yes. The acceptance and cashing of the checks makes the newspaper liable.
25. Q. You ask the owner of a house at what price he is willing to sell it. The owner replies by naming a price which you accept. Is this a binding contract?
- A. No. This is not binding because the price mentioned does not necessarily mean that the owner would sell it to *you* at that figure.
26. Q. George, the owner of a house, writes a letter to Ralph, saying that if Ralph will appear at a certain time and place with the price in cash, he will receive a deed to the property. Ralph appears with the money, but George fails to show up. May Ralph compel George to go through with the deal?
- A. No. When George fails to show up, the offer is revoked.
27. Q. John offers to sell his house to Bill for \$3,500. Bill replies by offering \$3,000 which is refused. Bill then tells John that

he will pay the \$3,500 originally asked, but now John refuses to sell. May Bill compel John to go through with the deal at \$3,500?

A. No. When John's first offer was refused there was no acceptance and hence no contract. Bill's later offer of \$3,500 is a new offer altogether which may be accepted or rejected at John's option.

28. Q. Suppose, in the above case, Bill had merely asked John if he would consider taking \$3,000 instead of \$3,500, without definitely refusing to pay \$3,500. Would a binding contract have resulted?

A. Yes. A simple inquiry as to whether John would change his terms does not amount to a rejection.

29. Q. Brown writes Smith, offering to sell the former's house for \$5,000. Smith writes back, but offers only \$4,500. A few hours later, having changed his mind, Smith wires Brown, agreeing to buy the house for \$5,000. The wire, of course, reaches Brown before the letter. Brown now refuses to sell the house for \$5,000. Can he be compelled to do so?

A. Yes. An offer is not effective until communicated to the party making it. When Smith wired agreeing to pay \$5,000, the wire having reached Brown sooner than the letter, the contract was made. A rejection, like a revocation, does not destroy the original offer until actually communicated.

30. Q. John sends a magazine article to a publisher. Not hearing from him for three or four months, John writes to make inquiry concerning the manuscript. The editor replies that he is very sorry but the manuscript is lost. John does not have a carbon copy of the article. Does he have a claim against the publisher?

A. When one sends a manuscript to a publisher the latter is bound to take care of it for a reasonable time, since his business constitutes an asking of offers from the public. The publisher, on the facts mentioned above, would be liable in damages. To avoid liability, the editor must return the manuscript, if rejected, within a reasonable time.

31. Q. Brown offers to buy Smith's house for \$10,000. The offer is accepted. Before anything is done to effect the transfer

of the property, however, Brown dies. What are Smith's rights?

A. None. The death of the offerer, Brown, prior to the performance of any part of the act called for by the offer, cancels the offer. Hence, Brown's acceptance is ineffective.

32. Q. Tom enters Henry's employment under a contract whereby the latter agrees to give Tom, in addition to a salary of \$50 per week, a "fair share of the profits of the business," to be determined on January 1st. On January 1st Henry refuses to give Tom any share at all. Does Tom have a legal claim against Henry?

A. No. The contract is too vague to be enforced. To be binding, the agreement must clearly state what share of the profits Tom is to receive.

33. Q. Charles agrees to buy five acres of land out of more than ten offered by James, but without specifying which five acres. Charles gives James a \$500 deposit, but later changes his mind and demands his money back. May he recover the deposit?

A. Yes. If five specific acres had been mentioned, together with their boundaries, the agreement would be binding. As it is, the contract is too vague and uncertain to be enforced.

34. Q. You rent a grocery store from Henry, requesting him to give you the "first chance" to buy the property in case it should be for sale. No price is named. Henry agrees. Later, Henry sells the property containing the grocery store to someone else. What can you do about it?

A. Nothing, since the agreement is vague as to price, terms, etc.

35. Q. John promises to give his niece a house and provide for her at his death if she will live with him. She does. After John's death, the niece learns that her uncle has not provided for her as promised. Does she have a claim against the estate?

A. No. Such agreements are held to be too indefinite and vague to be enforced.

36. Q. Bill enters into a written agreement with the Blank Drug Company by which the latter employs him as manager of one of its chain drug stores. The contract provides that it

shall continue in force until both parties declare their intention to cancel it. Six months after being employed, Bill receives a better offer from a rival firm and leaves his employer. Bill is sued for breach of contract. Will the Blank Drug Company recover?

A. No. Such agreements are generally held invalid due to uncertainty as to the length of employment. To be effective, the agreement must be specific; it must state, exactly, the period of time covered by the contract.

37. Q. A reward of \$500 is offered for the "arrest and conviction" of Jones, a murderer. Intending to claim the reward, Tom pursues Jones and kills him while making the arrest. May Tom claim the reward?

A. Yes. The terms "arrest and conviction" have been complied with when a fugitive is killed during an attempt to arrest him.

38. Q. A reward is offered for the arrest and conviction of a criminal. Through your efforts the criminal is arrested and placed in jail pending trial; while there the criminal commits suicide. Are you entitled to the reward?

A. No. The conditions of the reward are not fulfilled. The criminal has been arrested but not convicted.

39. Q. A reward is offered for the detection and arrest of certain criminals who set fire to a building. A policeman arrests Bill who is later convicted of the crime. May the officer claim the reward?

A. No. A police officer cannot recover a reward where the services he performs are those within his official duty.

40. Q. Mrs. Smith tells a policeman that if he will arrest Mrs. White, who has just struck her, she will pay the officer \$50. Mrs. White is arrested and the policeman demands his money. Is he entitled to it?

A. No. In making the arrest he has done only what he is legally bound to do. Hence, there is no legal consideration for Mrs. Smith's promise.

41. Q. Alice, Bill's wife, leaves his home without just cause. In order to induce her to return, Bill gives Alice his note for

\$1,000. Alice returns and later files suit on the note against Bill. Can she recover?

- A. No. The obligation to live with Bill is imposed by law and Alice's return is nothing more than the law requires of her. Bill's written promise, therefore, is without legal consideration.

42. Q. Tom enters into an agreement to build a house for Ralph. He finds the conditions much more difficult than he had reason to anticipate. Tom tells Ralph that, because of the unforeseen difficulties and the additional expense involved, he will not be able to go through with the contract. In order to induce Tom to go ahead, Ralph promises him an extra \$1,000 to complete the contract. Tom does complete the work but Ralph now refuses to pay the additional money. Must he?

- A. Generally speaking, no. Courts usually hold that Tom is only doing what he should have done in the first place and is not entitled to extra payment.

43. Q. An uncle promises to give his nephew \$1,000 if the latter will stop drinking and smoking until he reaches twenty-one years of age. The boy does stop. A few weeks after the nephew reaches his majority, the uncle dies without having given him the money. May the nephew proceed against the uncle's estate?

- A. Yes. The consideration in this case is that the nephew lived up to a bargain—something he might not have done had not the uncle promised him the money.

44. Q. An aunt tells her nephew: "I will give you \$750 if you will promise to attend my funeral." He does. May he enforce his claim against the aunt's estate?

- A. Yes, for the same reason as in the above example.

45. Q. Alice, a spinster, lives with her brother Tom. For six years Alice keeps house for Tom and cares for his small children, but receives no pay and nothing is said on the subject. After Tom's death, Alice puts in a claim against his estate for compensation for services as housekeeper. Can she recover?

- A. No. Where one rendering such services is a member of the

family, receiving support therein, the law presumes that such services are donated gratuitously.

46. Q. A father tells his son that if the latter will buy a certain factory, the father will contribute \$5,000 towards the purchase price. Relying on this promise, the son buys the factory, but the father dies before making the payment. Can the father's promise be enforced against his estate?
- A. Yes, since the son did something which he might not have done and would not have been obligated to do had he not relied on his father's promise.
47. Q. An uncle promises his nephew to pay the expenses of the latter's trip to California. The nephew, relying upon the promise, makes the trip, spending his own money. Upon the nephew's return, the uncle dies. Does the nephew have a claim against the estate for the expenses of the trip?
- A. Yes. For the same reason as above.
48. Q. Three sons are the heirs at law of Johnson, who dies, leaving a will. Before the will is read, the three sons agree that they will share their father's estate equally, regardless of the terms of the will. Later, when the will is read, it is learned that Johnson left his entire estate to Tom, one of the sons, who now refuses to transfer any of the property to the other two. Can he be compelled to do so?
- A. Yes. The consideration in this case is good. It rests on the chance of each heir to gain something from the agreement, as well as the chance to lose.
49. Q. Jim gives Tom an option on his ranch for thirty days. The option mentions \$5 as the consideration. During the option period, oil is discovered on the land and Jim now seeks to revoke the option. May he do so?
- A. No. A dollar is an adequate consideration for an option for the purchase of real estate, according to the weight of authority. The happening of an unexpected event, the discovery of oil in this case, would not affect the option's validity.
50. Q. George gives Henry a thirty-day written option to purchase George's house for \$5,000. George receives no money for the option. Within the thirty days, Henry notifies George

that he is taking up the option and offers George the \$5,000. George refuses to give Henry the deed. Must he?

A. Yes. The acceptance of the option while it is in force makes the agreement binding.

51. Q. You engage Smith to build a house, the last payment of \$1,000 to be made "when the house is completed according to specifications." When the house is completed, you refuse to pay on the ground that the builder used a cheaper grade of paint than specified and that there are certain defects in the plumbing, due to the carelessness of the workmen employed. The builder now sues you for the \$1,000. Are you required to pay it?

A. Yes, but you may deduct a full allowance for the defects.

52. Q. Mrs. Smith goes into a department store to buy a hat. She tells the salesgirl that she wants to buy the hat, subject to the approval of her husband. The salesgirl agrees. Mr. Smith does not approve. Mrs. Smith returns the hat which is now refused by the salesgirl. Must Mrs. Smith keep the hat?

A. No. The hat was purchased conditionally and, since the condition was not fulfilled, she may return the hat.

53. Q. In consideration of his wife's dismissing a suit for divorce against him, Brown agrees not to live with his mistress. He further stipulates that if in the future he resumes relations with his mistress, he will convey certain real estate to his wife. Subsequently, Brown returns to his mistress. May the wife obtain the real estate promised by Brown?

A. Yes. This contract is binding because Brown's agreement not to live with his mistress is recognized in law as being good morals and sound public policy.

54. Q. Mrs. Brown engages an artist to paint her portrait, it being stipulated that the painting shall be to Mrs. Brown's satisfaction. After the portrait is completed, Mrs. Brown refuses payment on the ground that the painting is "not to her satisfaction." Must she pay the artist?

A. No. In this class of contracts, where the element of personal taste is involved, Mrs. Brown is the sole judge of whether or

not the portrait is satisfactory. She may, therefore, arbitrarily declare her dissatisfaction and refuse payment.

55. Q. What is a "divisible" contract?

A. Under such a contract it is possible to repudiate separate units of the goods sold without being held liable for breach of the entire contract. In short, the person repudiating would not be bound to pay for any items rejected.

56. Q. From samples submitted, the Jones Company orders twelve dozen pairs of overalls at different prices for each dozen. When delivered, only one dozen pairs conform to the samples. These the Jones Company keeps, returning eleven dozen. The manufacturer now sues the Jones Company for the purchase price of the entire twelve dozen. Can he recover?

A. No. This is a divisible contract; therefore, the Jones Company can keep one lot and return the others.

57. Q. What is an "indivisible" contract?

A. This is a contract where the repudiation of any unit of the goods or merchandise sold makes the party so repudiating liable for the breach of the entire contract.

58. Q. Jackson contracts to deliver six hundred tons of coal to Benson on October 12th and four hundred tons on October 22nd. Benson agrees to pay \$1,500 on October 27th and \$8,000 on November 15th. Jackson delivers the six hundred tons on October 12th, but refuses to deliver the four hundred tons on October 22nd. As a result, Benson refuses to make any payment at all. What are the rights of the parties?

A. This is an indivisible contract. Jackson, when he failed to make the second delivery, breached the entire contract. When that breach occurred, the contract being indivisible, Benson could repudiate the entire agreement and need not pay Jackson for either the first installment of coal which was delivered, or the second installment which was not delivered.

59. Q. Smith, by a written agreement, promises to deliver five thousand gallons of oil to Jones at seven cents per gallon. Subsequently, Smith delivers two thousand gallons of oil

and demands payment. Jones refuses to pay until the balance of the oil is delivered. Must he do so?

A. No. This is an indivisible contract. When Smith fails to deliver the five thousand gallons he forfeits right to secure payment for any part of the oil. According to agreement, it is five thousand gallons which are to be delivered, not two thousand, so Smith can only rightfully claim payment when he fulfills his share of the contract by delivering the five thousand gallons. Jones can retain the oil and sue Smith for breach of contract.

60. Q. Fred writes Catharine as follows: "I do hereby promise Catharine that I will not marry any person except herself. If I do, I agree to pay to Catharine \$1,000 within three months after I shall marry someone else." A year later, Fred does marry another woman and Catharine sues for breach of contract. Can she recover?

A. No. Such agreements are illegal, being against public policy.

61. Q. Mrs. Blunt, a widow, applies to a matrimonial agency in quest of a husband. She pays the agency an application fee of \$50, signing a written agreement whereby she agrees to pay an additional \$450 should a husband be provided within sixty days of the agreement. Within the stipulated time a husband is duly provided, and, after demand, Mrs. Blunt, now Mrs. Jones, refuses to pay the \$450. Must she pay?

A. No, not legally. Courts will not enforce such agreements, holding them to be contrary to public policy.

62. Q. Mrs. Brown, age seventy, in consideration for being taken into an old age home, agrees to sign a contract whereby she turns over to the home all the property she then has and all that she may thereafter acquire. She is not in the home more than a few months when her brother dies, leaving her \$2,000. Must she turn this money over to the home?

A. No. Such an agreement is not binding on Mrs. Brown, it being unreasonable and against public policy.

63. Q. I lend you money for the express purpose of gambling. You refuse to return what you owe me. Do I have a legal claim against you?

- A. Yes. The fact that the lender of money knows it will be used for illegal purposes, in this case gambling, does not prevent him from recovering the amount loaned, according to the weight of authority. Courts take the view that, even though the lender knows the illegal purpose of the loan, he is not a party to the unlawful transaction.
64. Q. John promises to pay Brown \$500 if he will falsely testify in a divorce case. Brown so testifies, but John refuses to pay the money. Does Brown have a claim?
- A. No. Such a contract is void as being against public policy and good morals.
65. Q. Tom owes Henry \$200. Henry writes the following letter to Tom: "If you will send me \$100 within one week, I will give you a release in full for my entire claim." Tom sends Henry a check for \$100 within the week, but Henry fails to send Tom the promised release. Not only that, but Henry now sues Tom for the other \$100. Can he recover?
- A. Yes. Henry is only getting back the money due him in the first place; he does not have to take less, despite his written promise to do so. This is only true, however, where the amount of the bill is undisputed.
66. Q. Arthur owes Bill \$500. In a letter to Arthur, Bill states that if Arthur will pay \$350 within one week of the date of the letter, Bill will give him a release and discharge in full for his entire claim. Bill further stipulates in his letter that he will not claim lack of consideration for the release of the \$150. Relying on the promises contained in Bill's letter, Arthur sends Bill a check for \$350 marked "Paid in Full." A few days later, Bill files suit for the additional \$150. Is he entitled to recover?
- A. Yes. There is no legal consideration for Bill's offer to take \$350 in full settlement for the \$500 claim. Bill's agreement to discharge the balance needs some other consideration besides part payment of a debt which is undisputed. In this case, the debtor incurs no legal detriment and Bill, the creditor, is only getting what he is lawfully entitled to.
67. Q. Your surgeon sends you a bill for \$200 for an appendectomy. No agreement is made beforehand as to the

amount of the bill. You feel that \$200 is more than you should pay and send your surgeon a check for \$150, marked "Paid in Full." Your surgeon accepts the check, cashes it, then sends you another bill for \$50. Do you have to pay?

A. Yes. Marking a check "Paid in Full," a common practice among debtors, has no legal value. However, in a case such as this where the amount is in dispute, marking a check "Paid in Full in re—disputed amount" will operate as a discharge of the obligation—if accepted and cashed.

68. Q. Tom turns over his house to Henry, a real estate broker, to sell. Henry finds a customer ready, willing and able to buy Tom's house at the agreed price and upon certain specified conditions. Tom now says that he has changed his mind about selling and refuses to go through with the deal. Henry sues Tom for the usual broker's commission. Must Tom pay it?

A. Yes. A broker is entitled to his commission when he secures a buyer ready, willing and able to buy on the owner's terms.

69. Q. Tom gives Charles the exclusive right for thirty days to sell Tom's property, promising to pay him a commission of five per cent of the selling price. Charles is about to close the deal with a prospective customer on the fifteenth day when Tom notifies Charles that he no longer wants Charles to represent him. What can Charles do?

A. He can file suit and recover the profits he would have made had he been allowed to proceed with the sale.

70. Q. At an auction sale at which John is present, the auctioneer offers a set of China dishes to the highest bidder. John, offering the highest bid, receives the set. When he goes up to examine the set, he discovers that it is not the one which he thought was being auctioned. May he cancel the sale?

A. Yes. Where a man bids upon one lot of goods, supposing it to be another, he is not bound. Here, there is a mistake as to the thing being sold which will void the contract.

71. Q. At an auction sale of land, the auctioneer verbally corrects an error in the printed advertisement of the sale. Harry is present at the sale but does not hear the correction. He buys the land, supposing that he is buying the property as adver-

tised. May he cancel the sale when he later learns that the land does not conform to the printed advertisement?

A. Yes. Since the auctioneer has reference only to the corrected advertisement and the buyer to the uncorrected one, legally their minds have not met as to what is being sold; hence, Harry may cancel the sale.

72. *Q.* Peter owns a blooded cow and is trying to sell the animal to George. Both Peter and George believe the cow to be barren, and Peter agrees to sell her for \$80. If the cow could breed, she would be worth \$1,000. After the bill of sale is signed, the cow is discovered to be with calf, and Peter now seeks to cancel the contract. May he do so?

A. Yes. No sale would have taken place except upon the understanding and belief that the cow was barren. When parties contract under a mutual mistake as to their respective rights, the contract may be set aside as not reflecting the real intention of the parties.

73. *Q.* John and George are negotiating for the sale of fifty crates of oranges, but no agreement is reached. John sends a telegram to George reading, "Send me three crates." The telegram, as delivered, reads, "Send me the crates," and George ships the fifty crates. Is John bound to accept fifty crates?

A. No. John is not bound by the altered telegram. Since there has been no meeting of the minds, there is no contract.

74. *Q.* There is an agreement to buy a lot in Walnut Street. It appears that there are two streets by that name, the buyer intending to purchase a lot on one of said streets, and the seller to sell a lot on the other said street. Can this contract be enforced?

A. No. This agreement is void because of a mistake as to the identity of the subject matter.

75. *Q.* In buying a cigar Larry gives the storekeeper a coin which he and the dealer suppose to be a half dollar, but which is really a gold coin valued at ten dollars. May Larry later recover the gold coin?

A. Yes. Here the mistake is as to the quality of the thing—to wit, the value of the coin, and this makes the sale void.

76. Q. Two men negotiate for the sale of a mule. John believes he is selling the mule for \$165. Bill is equally honest in the belief that he is buying it for \$65; he takes the mule away. Later, John seeks to have the sale cancelled. Can he?
- A. Yes. This is a mistake as to the price. Where such a mistake exists, there is no contract since the minds of the parties have not met.
77. Q. You own a cow which you know is diseased. You sell the cow to George, but make no mention of the cow's disability. Later, when George learns about it, he wishes to cancel the contract and recover his money. May he do so?
- A. Yes. Such a concealment amounts to fraud; it enables the party victimized to cancel the contract at his option.
78. Q. Jones looks at some land and, after Williams assures him that it is of good quality, buys it. Later, when Jones discovers that the land is not as fertile as he expected, he sues to cancel the sale and recover the installments paid on the purchase price. May he do so?
- A. No. Assertions of value or quality, when not warranted or guaranteed, though false, are not fraudulent. Such statements are mere matters of opinion. Hence, Jones will be bound by his contract.
79. Q. Arthur, upon retiring from business, offers to sell his adding machine to Brown for \$200. Arthur states that he paid \$300 for the machine and that its use in Brown's business will save him the expense of a bookkeeper. Arthur knows that his statement is false—that he paid only \$200 for the machine. Brown buys it for \$200. May Brown cancel the contract when he later discovers that Arthur only paid \$200?
- A. Yes. Representations as to cost are not matters of opinion and therefore may constitute fraud or misrepresentation. Where a contract is rendered unfair by fraud or misrepresentation, it may be avoided by the defrauded party.
80. Q. A mother promises a bystander \$1,000 if he will rescue her child from drowning. The child is saved. Can the stranger obtain the \$1,000 when the mother refuses to give it to him?

- A. No. Agreements made while acting under stress and excitement may be repudiated.
81. Q. The Alaskan Ice Company furnishes ice to Jackson under an agreement whereby Jackson pays \$6.50 per ton for all the ice he uses during the year. The Alaskan Ice Company sells its business to another ice company which continues to supply ice to Jackson—who believes he is still buying from the original dealer. When, at the end of the year, Jackson receives a bill from the second ice company, he refuses to pay on the ground that he only dealt with the Alaskan concern. Is Jackson justified in refusing to pay?
- A. No. The sale of the business to the second concern, together with the conduct of the Alaskan Ice Company in permitting the other ice company to fill such orders, indicates an assignment of the Alaskan's contract to the other ice company. Hence, when the second company carries out and performs the orders actually received, it has the rights of an assignee and may recover from Jackson.
82. Q. John sells his grocery store to Bill. Before buying it, however, Bill gets John to sign an agreement that John will not open another grocery store within ten blocks of the old one for a period of five years. A year after John sells his store, he opens one five blocks away. What can Bill do about it?
- A. He can sue John for breach of contract and collect damages. In order to be binding, an agreement, such as above, must be reasonably related to the protection of the business sold. This one does appear to be reasonable, and so Bill has a right of action.
83. Q. You sell your filling station, agreeing not to open another one anywhere in the city for a period of three years. Within six months, you open one five miles away from the original one. Suit is brought against you for breach of contract. What will the court decide?
- A. Probably, that you have not committed a breach of contract, since the stipulation not to open a filling station *anywhere in the city* would be considered unreasonable. The fact that the new filling station is not near enough to the old one to affect its business would also tend to decide the case in your favor.

84. Q. Jackson and King enter into a written agreement. By its terms Jackson agrees to employ King for one year at \$5,000. There is an oral agreement between the parties that King is to "kick back" \$20 per week. May this oral agreement be later introduced at the trial when Jackson sues King for breach of contract?

A. No. Neither party to a contract may seek to vary its written terms by offer of proof of an oral agreement. Hence, oral evidence will not be admitted to show that a promise contained in a written contract is not the actual promise made by the parties.

85. Q. You are employed to clean and repair a number of framed pictures, for which service Adams agrees to pay you a certain price. After you have worked on a few of the pictures, Adams cancels the order. Nevertheless, you go ahead and complete all the work originally given you. You sue for the full price. Can you recover?

A. You can only recover for the work performed by you prior to the cancellation of the order.

86. Q. Arthur agrees to deliver to Brown an air conditioning unit for \$2,000 within sixty days. Brown agrees to pay \$2,000 within one year from date of delivery, giving him a promissory note. When the time for delivery arrives, Brown is insolvent. Arthur knows this and, instead of delivering the air conditioning unit to Brown, sells it to Thompson for \$2,000. The unit is actually worth \$2,500, and Brown sues Arthur for \$500. Can he recover?

A. No. Brown's insolvency does not cancel the contract, but merely relieves Arthur of the necessity of extending credit. If Brown had tendered the cash, Arthur would have been bound, despite his insolvency. Since, at the time of the insolvency, Brown could not tender cash, Arthur is justified in selling the unit to another.

87. Q. You employ Mr. Downs, a nonresident, to come to your city as manager of one of your stores. It is agreed in writing that he is to assume his duties as of June 1st. Without notifying you he arrives June 8th, whereupon you inform him that the contract is cancelled. Mr. Downs sues you for breach of contract. Can he recover?

- A. If Downs' delay was due to illness or any other circumstances over which he had no control, he could probably recover damages. However, if the delay was deliberate and without sufficient excuse, causing great loss and inconvenience, he probably could not recover.
88. Q. An owner of a grain elevator agrees to receive a certain quantity of grain. When he receives the grain, the owner finds the storage capacity of the elevator has been taken up by other parties. Is the owner liable for breach of contract?
- A. Yes. The owner will not be excused from performance.
89. Q. A contract provides that Jones shall drive logs down a stream to a certain river. Before Jones has time to do so, the water in the stream suddenly falls and remains so low that further performance of the contract is made impossible. Is Jones liable?
- A. No. He is excused from performance, since the contract does not contemplate that Jones shall transport the logs in any way except down the stream.
90. Q. A house is blown down by a hurricane while in the course of erection. Upon whom does the loss fall?
- A. On the contractor who agreed to erect it. He is under an obligation to rebuild. The owner of the land is under an equal obligation to permit him to rebuild.
91. Q. A store is leased for the sale of intoxicating liquors. A few months later, a statute is enacted prohibiting the sale of liquor. The tenant now seeks to cancel his contract. May he do so?
- A. Yes. The above case is an illustration of a contract discharged because of a "legal impossibility." Where this occurs, the contract is cancelled.
92. Q. Phillips, a contractor, agrees in writing to construct a dwelling for Smith for \$8,500. The next day, Phillips suffers a heart attack. Is he excused from performing the contract?
- A. No. The law takes the view that he himself need not actually do the work but can secure others to do it for him. Therefore, he is not relieved of responsibility.
93. Q. Frank employs a contractor to build a house, agreeing to pay him \$5,000. After building a portion of it, the contractor

is taken ill and is unable to complete the job. Is the contractor excused from further performance?

A. No, for the same reason as above. In this case, the contractor is entitled to be paid for the part performed, if done properly, but Frank may deduct damages for the breach of contract.

94. Q. Black agrees to let the Women's Club have the use of his music hall for a concert on a certain day. Before the day of performance arrives, the music hall is destroyed by fire. The Women's Club thereupon sues Black for breach of contract. Will recovery be permitted?

A. No. This contract is subject to an implied condition that the parties shall be excused in case performance becomes impossible, due to destruction of the thing involved, in this case the music hall. Black, therefore, would not be liable for breach of contract.

95. Q. A famous pianist is engaged by a concert bureau to give a recital. The night of the concert the musician is unable to play, due to a severe cold. The concert bureau has gone to considerable expense in issuing tickets, advertising, etc. and files suit against the pianist for breach of contract. Can it recover?

A. No, unless the parties expressly agreed that incapacity due to illness, transportation difficulties, etc. should not excuse. Where the contract is silent as to this point, no recovery is possible. The principle of law is that where the performance relates to personal services which can only be rendered by the person promising to perform them, the death or serious illness of that person will excuse performance and hence will relieve him of liability in a suit for breach of contract.

96. Q. How is a contract discharged?

- A. 1. By agreement of the parties before a breach of the contract has taken place.
2. By substituting a new contract in place of the old one.
3. By inserting in the contract a provision which causes the agreement to be extinguished upon the happening of some event.
4. By performing the contract.

5. By impossibility of performance of the contract.
 6. By cancellation of the contract for some defect such as fraud, mistake or undue influence.
 7. By a breach of the contract by one party so as to avoid the necessity of performance by the other party.
 8. By the alteration of a written contract by one party without the consent of the other.
 9. By a discharge in bankruptcy or insolvency.
97. Q. When is time considered to be the essence of a contract?
- A. In business contracts, stipulations as to the time when an act shall be performed are generally of the essence—for example, where a contract stipulates that one hundred fall suits are to be delivered by September 1st and they are delivered September 5th, the firm who ordered the suits need not accept them.
- Time may be made the essence of a contract by the express stipulation of the parties, or it may be construed to be such from the nature of the transaction.
98. Q. Doherty agrees to convey his farm to Peterson. Peterson agrees to pay \$10,000 for it on July 15th. On July 17th, Peterson tenders the money to Doherty who refuses to accept. Can Peterson secure the farm on July 17th?
- A. Yes. Since time was not made the essence of the contract, a few days' delay will not affect the validity of the agreement. By tendering the money on July 17th, Peterson can enforce the contract.
99. Q. Brown employs Smith and Company to build a house for him, agreeing to pay \$10,000. After laying the foundation and erecting the framework, the builders, wilfully and without legal excuse, abandon the project. Is Brown under any obligation to pay Smith and Company for that part of the work already done?
- A. No. Brown can either sue Smith and Company for breach of contract, or employ another builder to complete the job, charging Smith and Company with the difference.
100. Q. John is employed as a clerk by Mr. Jones to run a branch grocery store for three years. Mr. Jones dies during the

second year of the written contract. Is John entitled to recover wages for the unexpired portion of the agreement?

- A. No. The death of the employer puts an end to the contract. This applies only to contracts, however, where personal services are involved.
101. Q. John is employed in a shoe store as a salesman, receiving a weekly salary. A few months later, John is discharged because of incompetency, receiving his discharge on a Wednesday. John claims he is entitled to be paid for the entire week. His employer claims that John need be paid only up to and including Wednesday. Who is right?
- A. The employer. When a servant or employee is rightfully discharged, he need only be paid his proportionate wages to date.
102. Q. Suppose, in the above case, John is wrongfully discharged. To what is he entitled?
- A. He may recover his entire weekly salary. John must, however, seek other employment to minimize damages. This means that he must attempt, in good faith, to obtain another job. If, for example, he is discharged on a Wednesday, makes a bona fide attempt to get another job and fails to do so, his employer will owe him salary for the full week. Should John find another job on Friday and begin work that day, his former employer will owe him salary only from Monday through Thursday.
103. Q. Smith defaults on a certain contract he made with Brown. Smith agrees to pay Brown \$2,500 in full satisfaction of the breach. Subsequent to this agreement, but before Smith pays any part of the \$2,500, Brown sues Smith for the original breach of contract, claiming \$6,000 damages. Does Brown have a valid claim?
- A. Yes. When there is an agreement to cancel an old claim, it is conditioned upon the new agreement being fully executed by performance. So long as there is no performance under the new agreement, the old one remains in effect. Hence, the failure of Smith to pay any portion of the \$2,500 restores to Brown all the rights he had under the original agreement, including the right to sue for breach of contract for the full \$6,000.

104. Q. Bill meets Jackson and orally offers him \$10,000 for his farm. Jackson accepts his offer. Bill gives Jackson \$1,000 to seal the bargain, agreeing to pay the balance the next day. Jackson accepts the offer and tells Bill he will give him a deed the following day. The next morning, Jackson tenders the deed, but Bill refuses to complete the transaction and demands his deposit back. Can Bill recover his deposit?
- A. No. The above contract is one which must be in writing. Normally, one who pays money under an agreement condemned by the statute of frauds, as in the above case, is entitled to the return of the money so paid. To obtain such a recovery it is essential that the one seeking the return of the deposit be ready, willing and able to complete his share of the bargain. This Bill refuses to do when he fails to pay the balance and complete the purchase. And, since Bill repudiated the contract, he cannot recover his deposit.

FORM 8

BUILDING CONTRACT

Agreement made this 10th day of January, 19—, between John Smith, hereinafter called the contractor, and Thomas Brown, hereinafter called the owner.

1. The contractor shall at his cost erect, build and completely finish in a good, substantial and workmanlike manner a house and other buildings upon a piece of ground belonging to the owner, situated _____, and containing, etc., according to the plans, elevations and specifications of works and drawings which have been respectively signed by the contractor and by Harry Barlow, the architect of the owner, and the contractor hereby admits that the said specifications, plans and drawings are sufficient for their intended purpose, and that the work can be successfully executed in accordance therewith, without any additional or extra work other than such as is necessarily implied therein, or to be inferred therefrom, upon a fair and liberal construction.
2. The said work shall be executed under the direction and to the satisfaction in all respects of the said Harry Barlow, architect for the owner.
3. On the signing of this contract complete and full possession of the said premises, so far as may be necessary for the execution of the said work, but not so as to constitute a tenancy, shall be given to the contractor, who shall forthwith commence the said work and actively prosecute the same; and the said work shall in all respects be completed within six calendar

months from the time when such possession shall be given. Provided, that in case any delay shall arise from fire, tempest, frost, or other inevitable cause or accident, or from any strike in the building trade, or by the default of the owner in paying in due course any moneys due and payable to the contractor under this contract, then such further time shall be allowed for the completion thereof as the said architect shall certify in writing to be reasonable.

4. All materials to be used in the work, although the same may not be particularly mentioned in the specifications, save as otherwise provided by the said specification, and save as may be hereafter otherwise required by the owner or his architect, by writing under his hand, shall be supplied and furnished by the contractor.

5. The contractor shall, on the completion of the said work, at his own expense remove and clear away all scaffolding, fencing, unused materials and rubbish from the same, and leave the whole of the work in a clean and proper state.

6. The owner shall pay to the contractor the sum of \$10,000.00, which shall include the cost of labor, and of all the materials and other things required for the purposes of the work, and of the conveyance or transport and removal thereof, in manner following, that is to say: the sum of \$2,500.00 upon the production to the owner of the certificate of the said architect that work to the value of \$2,500.00 has been duly executed to his satisfaction by the contractor; the further sum of \$2,500.00 upon the production of the like certificate that work to the value of \$5,000.00 has been so executed; and the remainder of the said sum of \$10,000.00 or \$5,000.00 upon the production to the owner of the certificate of the said architect that the said work has been in all respects completed in accordance with the contract and to his satisfaction.

7. Provided always that the said architect shall not give his certificate in respect of any work which is in any respect defective, or not according to contract, or otherwise not done to his reasonable satisfaction; nor while the contractor is not using due vigilance in the prosecution of the work, or otherwise making default in the performance of the contract.

8. The owner may, at any time during the progress of the work, by order in writing under his hand, make, or cause to be made, any alteration in the said original specifications and plans by way of addition or omission or otherwise deviating therefrom; and the said work shall be executed according to the said alterations or deviations under the direction and to the satisfaction of the said architect, in the same manner as if the same had been included in the original specification and plans; and any work or materials which shall so be ordered not to be done or used shall be omitted, or shall not be used by the contractor.

9. All additions and deductions to be made to or from the amount of the contract price, in respect of any such alterations or deviations from the

said specifications or plans aforesaid, shall be fixed by the said architect, and the difference of expense occasioned by any such alterations or deviations shall be added or deducted, as the case may be, to or from the contract price. But no payment or allowance whatever shall be made to the contractor for any extra work done or materials used by him without a previous order or authority in writing from the owner; and any alteration or deviation ordered or authorized as aforesaid shall not in any wise alter the total contract price to be paid to the contractor, except so far as the same shall alter the amount of labor or the value of the materials which may be required to be used in or about the works, nor shall alter the mode in which the contract price is to be paid, or in which the value of the work to be done is to be ascertained with a view to the payment thereof. And the contractor shall not, by reason of any such additions to or alterations in the works as aforesaid, be allowed any further time for completing the same, except such further time, if any, as the said architect shall in writing certify to be reasonable.

10. The owner shall be entitled to deduct any moneys which the contractor shall be liable to pay to the owner, under this contract or otherwise, from any sum which may become payable to the contractor hereunder; and the said architect, in making his certificates as aforesaid, shall have regard to any sums so chargeable against the contractor: provided, always, that this provision shall not affect any other remedy by action at law or otherwise, to which the owner may be entitled for the recovery of any such moneys.

11. In case the said work shall not in all respects be completed by July 10, 19—, or within such extended time as shall be allowed for that purpose, as hereinbefore mentioned, and the said architect shall certify in writing the fact of such noncompletion, then the contractor shall pay to the owner, as liquidated and ascertained damages for such default, and not as a penalty, the sum of \$100.00 for every subsequent week, and so in proportion for any part of a week, until the completion of the said work, such completion to be certified in writing by said architect.

12. All materials, scaffolding, tools, implements, machinery and effects whatsoever, which from time to time during the progress of the work be in, upon, or about the said premises, shall be deemed to be the absolute property of the owner, but the contractor shall nevertheless be solely responsible for the loss or destruction thereof, and for all damages which may happen thereto by fire, tempest, or any other cause whatsoever, and the contractor shall likewise be liable to make good all damage which may happen to the said work from any cause whatever during the progress thereof.

13. The contractor shall personally superintend the execution of the work, and shall not assign this contract or any part thereof, without the express license and approval in writing of the owner.

14. In case at any time during the progress of the work any unnecessary delay shall occur in the carrying on of the same through the default of the contractor, and the owner or the said architect shall give a written notice to the contractor to proceed with the said work, or leave the same at his then or last known place of abode or business, and the contractor shall not proceed with the said work to the satisfaction of the said architect within 15 days after such notice shall have been so given or left; or in case the contractor shall at any time neglect or omit to pull down or remove any work or materials which the said architect shall have certified in writing to be defective, or not according to the contract, within 15 days after written notice so to do shall have been given to him by the owner or the said architect, or left as aforesaid, or within such further time as may be specified in such notice; or in case the contractor shall become bankrupt, or enter into liquidation, or make any composition with his creditors, or shall assign this contract or any part thereof without license, then and in any such case the owner will be at liberty, without avoiding the contract, to take the said work wholly or partially out of the hands of the contractor, and to employ any other person or persons to execute the same; and for that purpose to take possession of and use all materials, scaffolding, tools, implements, and things on or about the said works; and all expenses and damages thereby incurred shall be ascertained and certified by the said architect, and shall be paid by the contractor to the owner.

15. The certificate, or decision in writing, of the said architect of the owner, upon any matter as to which he is hereby required or authorized to certify or decide, shall be final and binding upon both parties, except that the said architect may by his certificate make any correction or modification in any previous certificate which shall have been made by himself, or by any predecessor in office.

16. The contractor shall conform in all respects to the provisions and regulations of any general or local building act or ordinance, or of any local authority, which may be applicable to the said work, and indemnify the owner against all penalties incurred by reason of the non-observance of any such provisions or regulations.

In witness whereof we have hereunto set our hands and seals.

(seal) *Thomas Brown*

OWNER

(seal) *John Smith*

CONTRACTOR

Richard Roe

WITNESS

FORM 9

CONTRACT FOR THE SALE OF A HOUSE

Note: The following agreement is merely a contract whereby one party agrees to buy and the other to sell a house. It is not a deed, which represents the completed transaction.

This agreement, made this first day of June 19—, between John Doe, hereinafter called the vendor or seller, of the one part, and Thomas Brown, hereinafter called the purchaser, of the other part, witnesseth:

That the said John Doe, vendor, hereby agrees to sell to the purchaser, who agrees to purchase, for the sum of five thousand dollars, the fee simple, in possession, free from all incumbrances, of and in all that dwelling house and land belonging thereto situate on 10 Bayley Avenue, Yonkers, New York, heretofore in the occupation of said vendor, all which said premises are delineated on a plan here to be annexed and signed by the parties hereto; together with all the rights, easements and appurtenances thereto belonging; which said premises are sold and purchased upon and subject to the following terms and conditions

1. That the purchaser shall take, and on the completion of the purchase pay for, the fixtures and fittings in the said dwelling house and buildings, and specified in the schedule hereto annexed, at the valuation therein mentioned.

2. That on payment of the purchase money, and the value of said fixtures and fittings, the vendor shall execute a proper conveyance of the property according to the stipulations herein contained, which conveyance shall be prepared by and at the expense of the vendor, and sent to the said purchaser for approval fifteen days prior to August 30, 19—.

3. That the purchaser shall pay to the said vendor, upon the execution of these presents, a deposit of five hundred dollars on and in part of his purchase-money, and pay him the residue thereof on the 30th day of August, 19—, when the purchase shall be completed.

4. That if from any cause whatever, the purchase shall be delayed beyond September 15, 19—, the purchaser shall thenceforth be entitled to the rents and profits of the property and shall pay interest at the rate of 6 per cent per annum on the purchase-money till the completion of the purchase.

5. That if any obstacle or difficulty shall arise in respect to the title, the completion of the purchase, or otherwise, the vendor shall be at full liberty, at any time, to abandon this contract on returning the deposit money only to the purchaser.

6. That if the purchaser shall refuse or neglect to complete his purchase at the time hereby appointed, his deposit money shall be absolutely forfeited to the vendor, who shall be at full liberty, at any time afterward, to

resell the property, either by public auction or private contract; and the deficiency, if any, occasioned thereby, together with all losses, damages and expenses of and attending the same, shall be borne and paid by the purchaser, but any increase in the price obtained at such sale shall belong to the vendor.

7. That time in all respects shall be of the essence of this contract.

In witness whereof we have hereunder set our hands and seals.

Thomas Brown

PURCHASER

John Doe

VENDOR OR SELLER

Robert Smith

WITNESS

CHAPTER VI

Agency

THERE WAS a time, not so many years ago, when the average business man ran his establishment entirely alone. He was his own clerk and bookkeeper, and often the buyer and salesman as well.

With the growth and expansion of business it became increasingly difficult for one man to handle a variety of complex jobs. More and more he found it expedient to delegate power and responsibility to others. He began to appoint agents to act in his stead, investing them with authority to make binding contracts in his name.

Today, most of us, in one way or another, are either agents or employ others to act as agents for us. A salesman in a store is an agent for the owner. A real estate broker who is authorized to sell your house is your agent. An insurance man acts on behalf of his company. The editor of a magazine is the agent for the publisher when he accepts a manuscript.

The law of agency deals with the scope or extent of an agent's authority. Very often, the extent of that authority is not clearly defined, since there is no written instrument to serve as a guide. Hence it follows that, in most cases, the authority must be implied from the circumstances in each case, with special reference to previous custom either between the parties or in the particular trade or business. Conflicts commonly arise when the principal alleges that the agent exceeded his authority or that he never had the authority to act in the first place.

Agency deals with other matters as well. It is concerned, for example, with the duties and obligations of the agent to his principal, and, conversely, with the duties and obligations of the principal to his agent. Since there comes a time when the principal or agent seeks to end the relationship, the subject deals with the way agency may be terminated by either of the parties.

1. *Question:* What is agency?

Answer: An agency is a contractual relationship between two or more persons by which one party, called the agent, undertakes to perform certain acts for and on behalf of the other party, called the principal.

2. *Q.* How is an agency created?

A. An agency may be created orally, by written instrument, or implied by the circumstances or behavior of the parties.

3. *Q.* What is a principal?

A. A principal is one who, being himself legally competent to do any act for his own benefit or on his own account, entrusts it to another person to do for him.

4. *Q.* What is an agent?

A. An agent is one who undertakes to transact some business by the authority and for the account of another.

5. *Q.* Paul employs Arthur to obtain photographs illustrating Indian life. Arthur finds it necessary, in order to obtain such photographs, to employ an interpreter and to make small gifts to the Indians in order to induce them to have such photographs taken. Does Arthur have authority to employ an interpreter and procure gifts so as to make Paul, the principal, liable?

A. Yes. Unless otherwise agreed, authority to conduct a transaction includes authority to do acts which are incidental to it, usually accompany it, or are reasonably necessary to accomplish it.

6. *Q.* Bill employs Jack to sell goods in a farming community in which such goods are commonly sold on six months' credit. Jack, the agent, knows that Bill's goods there and elsewhere

have been sold only on thirty days' credit. Does Jack, the agent, have authority to sell on six months' credit?

A. No. An agent is authorized to comply with business customs only if the principal has notice that such customs exist. However, even usage or established business customs cannot contradict the specific terms of the known desires of the principal.

7. Q. Paul employs Arthur to open a store for him on June 1st. Under such a general agreement, what is Arthur empowered to do?

A. He may make arrangements for employing assistants and obtaining merchandise in anticipation of the opening, along with any other acts incidental to the opening of the store. However, Arthur is not authorized to sell merchandise in the store prior to June 1st.

8. Q. Jim employs Charles to manage Jim's grocery store. In Jim's absence, Charles contributes \$50 of the store's money to The Community Chest, to which merchants generally contribute. Does Charles have authority to do this so as to make Jim liable?

A. Yes. Unless otherwise agreed, authority to act as agent includes only authority to act for the benefit of the principal. Charles' contribution to The Community Chest is for Jim's benefit, as it obtains or retains good will.

9. Q. Paul employs a real estate broker to find a purchaser for Paul's house at a stated price. Does the real estate broker have authority to contract for its sale?

A. No. Authority to contract is not inferred from authority to solicit business for the principal, nor from authority to perform acts of service for the principal.

10. Q. Paul appoints Arthur as his agent to remodel his house according to specifications supplied by Paul. Does Arthur have authority to make contracts with artisans and those selling building materials, so as to bind Paul?

A. Yes. Unless otherwise agreed, authority to make a contract is inferred from authority to conduct a transaction, if the making of such a contract is incidental to the transaction, usually accompanies it, or is reasonably necessary to accom-

plish it. In this case, in order to remodel the house, Arthur must procure the necessary materials and workers. Hence, Paul will be bound.

11. Q. A steel company authorizes Jack to establish and construct a permanent branch of its steel mills. Nothing is specifically said about the acquisition of a site. Does Jack have the authority to acquire the necessary land so as to make the steel company liable?

A. Yes, for the same reason as in Question 10.

12. Q. Paul appoints Henry as the general manager of Paul's farm, upon which stock, grain and fruits are raised for sale. Does Henry have authority to sell the products of the farm?

A. Yes. Henry's contract calls for raising crops for sale. Therefore, he has the implied power to sell those crops.

13. Q. Jim authorizes Harry to go about the country selling Jim's goods. Jim puts into Harry's possession several large packages of goods and samples, but makes no provision for transporting them except by railroad. It is necessary to transport the goods and samples from one part of a city to another. Does Harry have authority to hire a taxicab to convey the samples and to charge the expense to Jim?

A. Yes. Authority to buy or sell usually includes authority to secure such assistance as the proper performance of the transaction requires.

14. Q. Paul appoints Arthur as his manager to operate several coal mines and to ship the coal to a seaport. Arthur finds that one of the mines cannot be operated profitably and wishes to sell it. May he do so?

A. No. Authority to conduct a business does not include authority to sell the business.

15. Q. Paul authorizes Alan to sell and convey a large farm to a "satisfactory buyer for \$5,000." Alan sells and conveys the farm for \$4,000 in money, with a mortgage for \$1,000. After the conveyance is made, Paul seeks to have the sale set aside. Will he succeed?

A. Yes. Alan had no authority to make such terms. Unless otherwise agreed, authority to sell includes only authority to sell for money payable at the time of the transfer of title.

It does not include authority to mortgage the subject matter, to exchange it, to make a gift of it, or to grant an option of purchase.

16. *Q.* Arthur is a traveling salesman for Paul, a wholesale grocer. On one of his trips, Arthur obtains from Tom an order for goods which he sends to Paul. Paul accepts the order and sends the goods to Tom. On his next trip, Arthur again visits Tom who pays Arthur the amount due on the goods previously sold. Arthur then absconds with the money. Paul now seeks to hold Tom liable. Will he succeed?
- A.* Yes. Arthur was not authorized to receive such payment; Tom will be liable to Paul if he makes payment to Arthur. An agent is not authorized to receive payment unless he is expressly given power to do so by his principal. When a third party, in this case Tom, pays the agent rather than the principal, he does so at his own risk.
17. *Q.* Paul employs Jim as an auctioneer to sell his horse. Jim sends the horse to another auctioneer to sell. May Jim legally do this?
- A.* No. The first auctioneer has no authority to delegate his job to the second auctioneer, and the second auctioneer has no authority to sell the horse. Unless otherwise agreed, authority to conduct a transaction does not include authority to delegate to another the performance of acts incidental thereto which involve discretion or the agent's special skill.
18. *Q.* Paul tells his wife that she may open charge accounts with certain designated local stores, but with no others. In Paul's name, the wife opens accounts with the designated stores and also with others, the latter accounts not being revealed to Paul. Small bills for supplies are incurred. Each month Paul gives his wife the money to pay the household bills, making no inquiries as to the creditors. At the end of six months, Paul discovers the facts and refuses to pay the current bills of the unauthorized stores. May these stores recover from Paul?
- A.* Yes. A wife has apparent authority to incur such indebtedness, since the husband is under a legal obligation to support and supply his wife with the necessities for her existence.

19. *Q.* Paul, a peach grower, ships peaches to his factor (commission merchant) in the city. Twelve hours before they are due to arrive, the factor learns that in his city, owing to excessive arrivals, peaches will not bring enough to satisfy the freight charges, but that, if diverted to a factor in another city, the peaches will bring a much higher price at no greater freight cost. He does divert them, but the peaches are unexpectedly destroyed by flood. Is the factor liable?

A. No. He is authorized to re-route the fruit; the fact that it may be unexpectedly destroyed by flood in the other city does not subject him to liability to the principal. Unless otherwise agreed, an agent may do what he reasonably believes to be necessary in order to prevent substantial loss to the principal.

20. *Q.* Paul owns a store. He marks the sale price of his goods in a cipher which the clerks understand, and directs them to sell the goods at those prices. A customer applies to one of these clerks for an article, inquiring as to the price. The clerk, mistakenly reading the cipher, names a price lower than the one marked. The customer buys the article, paying the clerk the price named. Is Paul, the owner, bound by this sale?

A. Yes. The clerk was acting within the apparent scope of his authority.

21. *Q.* A fire insurance company appoints Arthur as its general agent for a certain state. It is agreed that Arthur open offices in cities selected by him and receive a specified commission on business done. Does Arthur have power to appoint subagents?

A. Yes. And the subagents, by their authorized acts, may bind the company. A general agent has either express or implied authority to appoint subagents. The authority is expressed when the principal, in writing or otherwise, gives the general agent such authority. This authority is implied when the exigencies of a business, as in the present case, compel the general agent to appoint subagents to help in carrying on that business. A subagent, employed without the knowledge or consent of the principal, has a remedy against his immediate employer only. As against the latter, the sub-

agent has the same rights, obligations and duties as if the agent were the sole principal. However, where a subagent is ordinarily or necessarily employed in a business, as in the present example, he can maintain a claim for compensation both against the principal and the immediate employer, unless exclusive credit is given the principal—in which case his remedy is against the principal only.

22. Q. Paul directs Arthur to make a written contract in Paul's name for the purchase of goods. Arthur buys goods from Thompson who knows that Arthur is acting for Paul, the memorandum specifying that Arthur is the buyer. Is Paul subject to liability on the contract?
- A. Yes. A principal who directs an agent to make a contract in the principal's name is subject to liability, although made in the agent's name, unless the principal is excluded from it by its terms.
23. Q. The Perkins Company employs Jack to sell shares in the company, instructing Jack not to make any representations except those contained in the prospectus. The prospectus is silent concerning the assets of the company, the number of shareholders or the company's affiliations. Jack makes false statements concerning the assets of the company upon which Thompson, a buyer, relies. Jack contracts with Thompson by a written agreement in which it is stated that Jack is not authorized to make statements except those in the prospectus. May Thompson repudiate the agreement when he learns of Jack's false statements, and hold the Perkins Company liable?
- A. Yes. Although a principal tells an agent that the agent is not authorized to make particular statements, if he believes the agent will make such statements and that they will be relied upon by persons with whom the agent deals, the principal will be held liable.
24. Q. Paul, a manufacturer, who has previously done his own buying, appoints Arthur as purchasing agent, telling him that he is to buy what the mill needs. During his first three months, Arthur purchases coal of a grade not previously

used in the mill. Paul pays the monthly bills for this, knowing of the change. Later, he changes his mind and seeks to have the orders cancelled. May he do so?

A. No. By paying the bills with knowledge of the change, Paul has affirmed Arthur's conduct and bound himself thereby.

25. Q. In the absence of Bill, the owner and manager of a small newspaper, his friend Arthur takes charge, without authority, and publishes several issues. In the course of these he libels Tom. On Bill's return, he affirms the publication. May Tom recover damages from Bill?

A. Yes. Bill has ratified Arthur's originally unauthorized act; by doing so he makes himself responsible for Arthur's libel of Tom.

26. Q. Pretending to act for Paul, but actually without power to do so, Arthur contracts to purchase goods from Thompson. Upon learning of the transaction, Paul writes Thompson that he will have nothing to do with the deal. While Thompson is wondering what to do with the goods, he receives a letter from Paul stating that he wishes the goods. Is Paul now bound to accept them?

A. Yes. He has ratified a previously unauthorized act; by doing so he makes himself liable.

27. Q. Jim appoints Henry as sales manager. Henry affirms for Jim unauthorized contracts made by Jim's salesmen before Henry's appointment. May Henry legally do this?

A. Yes. An agent may be authorized to ratify for his principal the previous unauthorized acts of another agent.

28. Q. Arthur, a clerk employed by Paul, but having nothing to do with advertising, places an advertising order for six months with Tom, in Paul's name. Paul learns of this and, although he knows that Tom is preparing copy, does nothing about it. Is Paul liable for the unauthorized act of Arthur?

A. Yes. Confirmation of an unauthorized transaction may be implied from a failure to repudiate it.

29. Q. Jim asks Charles to buy fifty tons of coal for him. Charles buys the coal from Tom through correspondence, not re-

vealing, however, that he is acting for a principal. Who is liable for the coal?

A. Jim. He is what is called an undisclosed principal. Such a principal is bound by contracts made on his account by an agent acting within his authority.

30. Q. Peter directs Anthony to buy goods in Anthony's name, Peter alone to be responsible to the seller. In order to carry out his agreement with Peter, Anthony, in contracting with Tom, refuses to divulge whether he is acting for himself or for a principal. He includes in the contract a provision that he alone shall be subject to liability. After Anthony repudiates the contract, Tom, the seller, learns that Peter is the principal and seeks to hold him liable. Can he?

A. No. An undisclosed principal does not become liable on a contract which provides that he shall not be a party to it.

31. Q. Arthur offers to contract with Tom, but Tom refuses to deal with him. Arthur then falsely represents that he is acting as agent for another whose name he does not disclose. A contract is made, Arthur signing the document "Arthur, Agent." Is Arthur liable, in case of default?

A. Yes. Where the real principal pretends to be an agent dealing for an unidentified principal, the fact that the other party is willing to deal with him does not prevent the fictitious agent from being liable when he is later discovered to be the principal.

32. Q. Sam, acting for Paul but pretending to be acting wholly on his own account, contracts with Tom for one hundred bushels of grain, signing the memorandum with his name only. Who is liable in the event of default?

A. Paul. An undisclosed principal may be liable upon a contract in writing even though it purports to be the contract of the agent.

33. Q. Paul directs Arthur to shoot any unknown person entering premises belonging to Paul. Arthur shoots Tom who is rightfully entering the premises. Is Paul liable?

A. Yes. Paul is liable because he should have instructed Arthur not to shoot those lawfully entering the premises. By not so

instructing him, he becomes liable for Arthur's wrongful act.

34. Q. Paul directs Arthur to use an automobile which, as Paul knows but Arthur does not know, has a hidden defect, making the car dangerous. Owing to this defect, Arthur, while using the car, injures a pedestrian. Is Paul, the owner, liable?

A. Yes. Liability is based on the fact that Paul had knowledge of the defect which he failed to disclose to Arthur.

35. Q. Paul employs Carl to dig a hole in the street, instructing him to protect travelers therefrom. Carl digs the hole but fails to illuminate it. Tom, a pedestrian, is injured when he falls into the hole, owing to the absence of illumination. Is Paul liable?

A. Yes. A principal who is under a duty to provide protection for, or to have care used to protect others or their property, and who delegates the performance of such duty to an agent, is subject to liability for harm caused by the failure of such agent to perform the duty.

36. Q. Paul employs Burt to operate the former's grocery store in Burt's name. Burt employs clerks who believe that Burt is the actual owner. One of the clerks gets into a fight with a customer, severely injuring him. Is Paul liable?

A. Yes. An undisclosed principal is liable for conduct within the scope of employment of servants employed for him by an agent empowered to do so.

37. Q. Robert operates a small store and employs two clerks and a delivery boy. One of the clerks, during the absence of Robert and the delivery boy, although his ordinary employment does not include such service, delivers a package to a point close to the store, using a bicycle supplied for the delivery boy's use. While doing so, the clerk carelessly runs over a small boy. Is Robert liable?

A. Yes. The clerk was acting within the scope of his apparent authority.

38. Q. In selling guns, Jack directs his salesman never to insert a cartridge while exhibiting a gun. The salesman fails to fol-

low this instruction and causes a gun to go off, killing a passer-by. Is Jack liable?

A. Yes. Even a forbidden act may be within the scope of the agent's or servant's authority. A master cannot direct a servant to accomplish a result, anticipating that he will always use the means which he directs or that he will refrain from acts which it is natural to expect that a servant may do.

39. Q. Paul, the owner of a house, tells his janitor to collect the rubbish and to deposit it only in barrels provided for that purpose. The janitor, however, in collecting the rubbish, burns it in a vacant lot back of the house. Because of this, the house next door is set on fire. The owner naturally seeks to hold Paul liable. Can he do so?

A. Yes, for the same reason as in Question 38.

40. Q. Arthur, Paul's chauffeur, while on an errand for Paul, to avoid a rough spot in the road unlawfully drives upon the sidewalk, striking and injuring a pedestrian. Is Paul liable?

A. Yes. Arthur was still acting within the scope of his authority.

41. Q. Robert employs Jim as a watchman to guard against fires and burglaries. Jim discovers a fire which endangers Tom's house, but fails to put it out or to give the alarm in time. Tom's house burns down. Suit is filed against Robert. Will recovery be permitted?

A. Yes. When Jim failed to give the alarm in time to prevent the fire from spreading, he was negligent, and the principal or master will be held liable in damages.

42. Q. Paul employs Arthur as a clerk. After the ordinary closing time, Arthur remains to clean some implements for the next day's use. In doing so he turns on and neglectfully fails to shut off water which, overflowing the bowl, runs into the apartment of a tenant on the floor below. Is Paul liable?

A. Yes. Arthur's failure to shut off the water is conduct within the scope of employment for which the principal is held liable.

43. Q. Arthur, agent for an insurance company, employs a sub-agent, this being authorized. Arthur falsely represents to the subagent that a rule of the company requires a cash deposit of \$750. The subagent deposits this amount with Ar-

thur who steals it. The subagent now seeks to recover the money from the insurance company. Can he?

A. Yes. A principal who places an agent in a position enabling the latter, while apparently acting within his authority, to commit a fraud on another person is subject to liability for the fraud.

44. Q. An automobile club authorizes Arthur to direct travelers. A traveler relies upon Arthur's statement that a particular road is safe; by doing so, the motorist is injured. Is the auto club liable?

A. Yes. The traveler has a right to rely on Arthur's statement, since Arthur was acting within his employment, even though he carelessly gave erroneous information.

45. Q. Paul directs Arthur, a traveling salesman supplied with a car, to sell goods only in Albany. The salesman, however, drives to Rochester to sell goods. While driving there, he negligently injures a pedestrian. Suit is filed against Paul. Is he liable?

A. No. He is not liable since Arthur went an unreasonably long distance away from the place where he was authorized to do business. Hence, Arthur's acts in Rochester were not within the scope of his employment.

46. Q. Bill is employed as a truck driver, with hours from eight to five. At four o'clock he finds he has a load to deliver. Instead of delivering it, he drives home, remaining there until ten o'clock, after which he delivers the load. While doing so he negligently injures a pedestrian. Is the owner of the truck liable?

A. No. Bill was not acting within the scope of his authority when he made the delivery at ten o'clock. Only Bill himself could be held liable, not the owner of the truck.

47. Q. Arthur, a truck driver for Bill, invites Tom to ride with him, this being against orders. While Tom is riding with Arthur's consent, Arthur drives the truck at an excessive rate of speed to make up for lost time, causing an accident in which Tom is injured. Is Bill, the employer, liable?

A. No. Arthur had no authority to accept Tom as a passenger. When he did so, he himself assumed the legal obligation.

48. Q. A shirt manufacturer employs Arthur, for a period of five years, as a traveling salesman to sell shirts on commission. Two years later, the factory burns down and the manufacturer does not resume business. Is he liable to Arthur?
- A. Yes. The destruction of the factory does not relieve the manufacturer of liability; however, no action against the manufacturer can take place until he has had a reasonable time to rebuild the factory.
49. Q. Paul promises Arthur a commission if he will find a purchaser for Paul's land. Arthur advertises and the advertisement is seen by Tom who, in response thereto, goes directly to Paul, the deal taking place without Arthur's knowledge. Is Arthur entitled to his commission?
- A. Yes. An agent, whose compensation is conditional upon his accomplishment of a specified result, is entitled to the agreed compensation if, and only if, he causes the result. Arthur's "ad" accomplished this.
50. Q. Paul lists his house with Arthur for sale. Arthur introduces Tom, who agrees to meet Paul's terms, except for one or two minor matters. Paul agrees to think the matter over until the next day. Paul then telephones Arthur, dismissing him and advising that the deal is off. The next day, Paul seeks Tom who now agrees to the terms upon which Paul had insisted the day before. Is Arthur entitled to his commission?
- A. Yes. Paul terminated his relations with Arthur in bad faith. Arthur had secured a buyer ready, willing and able to purchase the property. Paul would be liable.
51. Q. Paul places goods in the hands of an auctioneer. The auctioneer sells some of them, but the proceeds are insufficient to pay all of his charges on the transaction. May the auctioneer retain the unsold goods as security for his charges?
- A. Yes. An agent who receives possession of goods has a right to retain possession until the principal has paid him what is due on them.
52. Q. Paul appoints Arthur as his agent to sell goods in markets where the highest price can be obtained. Instead, Arthur sells in a glutted market, obtaining a low price. A higher

price would have been obtained in a near-by market had Arthur used care in securing information which was available to him. Is Arthur liable?

A. Yes. A paid agent must act with reasonable skill in his undertakings. When Arthur failed to obtain such information, he was not acting with reasonable skill and diligence.

53. Q. Paul employs Jack as a clerk to sell goods, his remuneration being a weekly salary. Nothing is said as to the manner of selling. Paul later directs Jack to sell the goods at such unreasonable prices that practically nothing can be sold. Is Jack obliged to obey?

A. Yes. He must follow instructions. Even if Jack sells nothing he is still entitled to his salary; as long as Paul is paying that salary Jack must obey orders.

54. Q. Jim, the purchasing agent for a railroad, buys, for a fair price, twenty-five automobiles from Tom, who is going out of business. Grateful for Jim's favorable action, Tom gives Jim a gift of a car. May Jim, the agent, retain the automobile?

A. No. Unless otherwise agreed, an agent who makes a profit in connection with transactions conducted by him on behalf of the principal is obliged to give up such profit to the principal.

55. Q. Robert directs Arthur to buy shares for him "at the market." Arthur, a broker, has such shares on hand; and, unable to obtain them elsewhere, he conveys his shares to Robert at the market price. Within a few days, Robert changes his mind and desires to cancel the transaction. May he?

A. Yes. Unless otherwise agreed, an agent must not deal with his principal as an adverse or hostile party. This rule exists to prevent a conflict of interests in agents whose duty it is to act solely for the benefit of their principals.

56. Q. Paul employs Arthur, for a term of three years, as a salesman in a mercantile business. As part of the contract, Arthur promises not to compete with the employer in the same town for two years after termination of the contract. Is Arthur bound by such an agreement?

- A. Yes. Such a restraint is reasonable and is considered a valid protection of the employer's interests.
57. Q. Suppose, in the above example, Arthur agrees never to compete with the employer in the same town. Would Arthur be bound?
- A. No. Such a restraint is considered unreasonable.
58. Q. Harry is employed by Charles to buy wheat for future delivery. Harry carelessly fails to purchase the wheat. Had he done so, Charles would have made a profit. Is Harry liable?
- A. Yes. He is liable to Charles for such profit, for, in failing to follow his principal's instructions, he has caused him damage for which the agent can be held liable.
59. Q. How is an agency terminated?
- A. 1. By revoking the agent's authority. This may be done in writing, orally, or may be implied from the circumstances
2. By the agent's renouncing his right to act for and on behalf of the principal
3. By the insanity of the principal or agent.
4. By the bankruptcy of the principal.
5. By the death of the principal or agent.
6. By the extinction of the subject matter of the agency.
7. By the complete execution of the trust.
60. Q. Dan is run over in the street. He asks several bystanders to find a doctor for him. Arthur, Ben, Charles and Paul start to look for one. Before Arthur can obtain one, he sees Ben summon a physician. Does Arthur still have authority to find a doctor?
- A. No. His authority ends when he sees Ben procure a physician, for he can then imply from the circumstances that no further aid is needed.
61. Q. Paul authorizes Arthur to buy a bicycle for him. Arthur knows that Paul desires to buy only one bicycle; he also knows that Paul has not authorized any other agent to buy one. Before Arthur has bought a bicycle, Paul himself buys one. Arthur has no notice of this. May Arthur go ahead and purchase the bicycle, making Paul liable?

A. Yes. In the absence of evidence to the contrary, an agent's authority is not terminated until he has accomplished the purpose for which he was employed or is notified of the termination of his employment by the principal.

62. Q. Paul writes Arthur, agent, on June 1st: "Do not act further for me." The letter should have been received by Arthur on June 3rd, but it is lost in the mail. On June 5th, Arthur acts for Paul. Is Paul, the principal, liable?

A. Yes, because Arthur had no notice of the cancellation of authority.

63. Q. Paul has a growing crop for which a supply of water is essential. During a drought, Paul authorizes Arthur to contract for irrigating the crop. Before Arthur has a chance to act, rain comes, making irrigation no longer necessary. Arthur knows this. May he still go ahead and contract for the irrigation?

A. No. Arthur's authority is ended. When an agent has notice of the terminating event, such as, in this case, the rain, he no longer has authority to continue acting on behalf of his principal. Indeed, the terminating event is equivalent to notice that the principal has ended the agent's authority to act on his behalf.

64. Q. Bert directs Jim to sell a piece of land for \$5,000, its approximate value. Jim is a real estate agent living in a town ten miles from the land. Oil is discovered near-by and the price readily obtainable for the land triples. A week or so later, Jim not having learned of this, as he would have had he been attentive to his business, sells the land to Thompson for \$5,000. May Bert repudiate the sale?

A. Yes. An agent's authority ends or is suspended when the agent knows, or should know, of the happening of an event or a change in conditions, from which he may reasonably infer that the principal does not consent to the further exercise of authority, or would not consent if he knew the facts.

65. Q. Paul gives Arthur, a broker, the exclusive right to sell his farm. Later, Paul conveys the farm to Fred. Without notice

of such conveyance, Arthur contracts to sell the farm to Thompson. Is such a sale binding on Paul?

- A. Yes. Where the principal intentionally destroys or conveys the subject matter, the agent's authority to bind the principal by a contract is not terminated until the agent receives notice thereof.
66. Q. Paul authorizes Arthur to purchase goods for the establishment of a business in a Latin American country. Before Arthur makes any purchases, a revolution occurs in the Latin American country and all property there is confiscated. May Arthur legally continue to make purchases for and on behalf of Paul, with a view to starting the business?
- A. No. The outbreak of war, of which the agent has notice, ends his authority. The conditions are so changed that he should infer that the principal, if he knew the facts, would no longer consent to have the agent act in his behalf.
67. Q. In consideration of Arthur's agreement to advertise and give his best energies to the sale of a farm, its owner, Frank, grants Arthur a power of attorney, irrevocable for one year, to sell it. At the end of three months, Frank informs Arthur that he revokes the latter's authority to sell. May he do so?
- A. Yes. But Arthur has a right of action against Frank for breach of his contract.
68. Q. Bill authorizes Jim to sell Bill's grain and receive the price thereof. The next day, Bill tells Jim to give a thousand bushels of the grain to the Red Cross. May Jim still sell this one thousand bushels and collect the money?
- A. No. A principal may end the agency by conduct inconsistent with its continuance, as in the above example. He may also end the agent's authority when he retakes possession of the goods, or disposes of the subject matter or of his interest therein.
69. Q. Paul employs Arthur, among others, to solicit and make sales in a certain specific territory. A rule strictly enforced by Paul, and known to Arthur, is that all canvassers must report back to Paul's office weekly, and must look at the bulletin board for changes in assignments. Paul posts a document on the board stating that Arthur is dismissed.

Arthur does not see the document on the day he is required to look at the bulletin board. May Arthur continue to make sales so as to bind Paul?

- A. No. Arthur's authority is terminated the day the notice of dismissal is posted on the bulletin board. Had Arthur looked at the board as he was required to do, he would have learned about the dismissal.

70. Q. Jones buys an option on a piece of land and authorizes Jack to sell it. Two hours before the expiration of the option, and while Jack is in the process of executing its sale to Thompson, Jones dies. What can Jack do about it?

- A. Nothing. The death of the principal terminates the authority of the agent.

71. Q. Paul employs Arthur, a stock broker, to buy at the market 5,000 shares of stock in Arthur's name—but for Paul's account. Unknown to anyone, Paul dies, and, a few minutes thereafter, Arthur buys the shares. May Arthur hold Paul's estate liable?

- A. No. An agent's authority ends upon the death of the principal, although the agent has no means of knowing at the time that the principal has died.

72. Q. Paul authorizes Arthur to employ Ben as Arthur's subagent. Arthur does so. Shortly after this, Arthur dies. Is Ben still a subagent?

- A. No. The death of the agent terminates the authority of the subagent.

73. Q. A fire insurance company appoints Arthur as its general agent in a certain town, supplies him with a registry book in which to register policies issued by him, and equips him with blank policies and other supplies for use in the business. Later, the fire insurance company cancels Arthur's authority, but does not require him to surrender his commission as agent. It permits him to retain the registry book and supplies. Thompson deals with Arthur in reliance upon the appearance of his continued authority caused by the possession of the documents, and without notice of the revocation. Is the fire insurance company liable to Thompson,

whose house burns down shortly after he takes out a policy through Arthur?

A. Yes. The fire insurance company would be bound to Thompson, since the latter had no notice that Arthur's authority as agent had been terminated.

74. Q. Paul, who carries on business in Chicago, employs Bill as his general agent. Thompson knows of the agency but has never dealt with Bill. Paul later revokes Bill's authority and publishes a statement to that effect in a Chicago newspaper. Thompson does not see the statement, he deals with Bill in accordance with, and in reliance upon, the former agency. May Thompson hold Paul liable for the transaction made with Bill?

A. No. Paul has given sufficient notice of revocation to Thompson by publishing such notice in the newspaper.

75. Q. Paul appoints Arthur as his agent to sell land to Tom. That night, unknown to anybody, Paul dies. The following morning, Arthur executes a contract of sale to Tom in Paul's name. Who is liable on the contract?

A. Arthur. His authority ended with the death of Paul.

76. Q. Paul employs Helen, a motion picture actress, who, in disobedience to Paul's orders and without excuse, remains away from the studio for one day, causing production of the film to be held up. May Paul discharge Helen?

A. Yes. A principal may discharge an agent, before the time fixed by the contract of employment, when the agent commits such a violation of duty that her conduct constitutes a material breach of contract.

77. Q. Arthur, employed by Paul as his bookkeeper for a year, steals small sums from the cash drawer. Paul, knowing this, retains Arthur in his employ. May Paul later discharge Arthur for the original theft?

A. Yes.

FORM 10

GENERAL POWER OF ATTORNEY

Know ALL Men by These Presents:

I, John Doe, residing in the City of Louisville, Ky., by these presents hereby make, constitute and appoint Thomas Brown, also of Louisville, Ky., my true and lawful attorney in fact for and in my name, place and stead, to (here insert the power intended to be conferred which should be stated in clear and precise language, as for example, to purchase a 19— Buick Sedan to cost not more than nine hundred dollars).

I hereby grant and give unto my said attorney in fact full authority and power to do and perform any and all other acts necessary or incident to the performance and execution of the powers herein expressly granted, with power to do and perform all acts authorized hereby, as fully to all intents and purposes as the grantor might or could do if personally present, with full power of substitution.

In testimony whereof I have set my hand and seal this fourth day of February, 19—.

John Doe
GRANTOR

Richard Roe

WITNESS

John Smith

WITNESS

FORM 11

AGENCY CONTRACT WHEREBY A TRAVELING SALESMAN
IS EMPLOYED

This agreement made this fifth day of June, 19— by and between John Doe and Maurice Groh, doing business under the name of The Outlet Company, witnesseth:

1. The said salesman shall enter into the service of the said firm as a traveling salesman for them in their business of manufacturing boys' clothing for the period of one year from the 10th day of June, 19—, subject to the general control of said The Outlet Company.

2. The said salesman shall devote the whole of his time, attention and energies to the performance of his duties as such salesman, and shall not, either directly or indirectly, alone or in partnership, be connected with or

concerned in any other business or pursuit whatsoever during the said term of one year.

3. The said salesman shall, subject to the control of the said firm, keep proper books of account and make due and correct entries of the price of all goods sold, and of all transactions and dealings of and in relation to the said business, and shall serve the firm diligently and according to his best abilities in all respects.

4. The fixed salary of the said salesman shall be five thousand dollars per annum, payable in equal weekly installments.

5. The reasonable traveling expenses and hotel bills of the said salesman, incurred in connection with the business of the said firm, shall be paid by the said firm, and the said firm shall from week to week pay the said salesman the said traveling expenses and hotel bills in addition to the said fixed salary.

Maurice Grob

THE OUTLET CO.

John Doe

SALESMAN

Robert Smith

WITNESS

CHAPTER VII

Sales

THE LAW OF sales deals with the rights and obligations of buyers and sellers of commodities. It is primarily concerned with the passing of title from the seller to the buyer so that ownership of the goods may be legally determined, for it is the real owner who must bear the loss in case of damage or destruction. The passing of title, therefore, transfers ownership from the seller to the buyer.

In a sale, or contract of sale, as it is sometimes called, title passes immediately to the buyer. This means that where goods are damaged or destroyed after the sale is made, the loss falls on the buyer, even though the seller retains temporary possession of them. In a contract to sell, on the other hand, title is reserved in the seller, so that if articles are destroyed the seller must bear the loss—despite the fact that the articles may be in the possession of the prospective buyer. When a contract to sell is completed, title passes to the buyer who must bear any loss from that point on.

Another important distinction is that in a sale the buyer may not only sue for breach of contract, but may insist on having the thing itself sold. In a contract to sell, since the buyer never had title in the first place, his only remedy is an action for breach of contract—not a right to possession of the thing sold.

This chapter, then, deals with when and how title passes, and the respective rights and obligations of the buyer and seller.

1. *Question:* A buyer purchases one hundred cases of marshmallow cream. When the order arrives, he finds that ninety cases are good, nine are broken and one case is missing. The seller offers to allow the purchaser a credit for the missing case as well as for the nine broken ones. The buyer, however, refuses to accept any part of the shipment. Is he legally justified in doing so?

Answer: Yes. The delivery of goods in an unsound condition is the same as a delivery of goods of a different quality or character. Even though the deterioration is slight, or only one case out of a large number is unsound or missing and the seller is willing to allow full credit, the buyer may refuse to accept delivery.

2. *Q.* Jones agrees to sell Brown his horse. Before the actual sale takes place the horse dies, through no fault of Jones. Is Jones liable to Brown?

A. No. The destruction of the subject matter before title passes excuses performance. If the horse had died after title passed, the loss would be Brown's, even though Jones still had possession.

3. *Q.* Jones agrees to sell Brown five hundred bushels of May wheat. No particular lot of wheat is specified as the subject matter of the sale. Jones has five hundred bushels of wheat on hand. Before the sale takes place, this five hundred bushels is destroyed. Is Jones still bound to deliver the five hundred bushels of wheat?

A. Yes. In this case, the destruction does not relieve the seller, for he can still perform his agreement by selecting out of other stock, or by going upon the market to buy.

4. *Q.* Jones agrees to sell Brown an automobile, the price to be fixed by White. Is this a good contract?

A. Yes. Where no price is mentioned, a reasonable sum will be implied.

5. *Q.* Jones tells Brown that he will sell him a horse for \$100. Brown says he will take the horse. It is arranged that Brown shall come next day to pay for and get the animal. Before Brown can pay the purchase price, the horse dies, through

no fault of either party. Must Brown still pay for the animal?

- A. Yes. Unless a different intention appears, where there is an unconditional contract to sell specific goods in a deliverable state, the property or title in the goods passes to the buyer when the contract is made. It is immaterial whether the time of payment or the time of delivery, or both, are postponed.
6. Q. Snodgrass sells Barrett all the lumber in a certain lumber yard, at an agreed price. It is understood that Barrett may remove the lumber at any time within four months, but he must pay the purchase price before removal. A few months after the agreement is made, but before payment, the lumber is destroyed by fire. Upon whom does the loss fall?
- A. On Barrett. Title to property passes when the parties so intend. Neither delivery nor payment are necessary to the passing of title. The general rule is that title passes at once when the goods are in a deliverable state and nothing remains to be done except payment and taking of possession.
7. Q. Farmer Smith brings a live calf to Brown's slaughter house. It is agreed that the calf be sold and delivered to Brown at fifteen cents per pound, dressed weight. The following night the calf dies, through no fault of anyone. May Farmer Smith recover the purchase price from Brown?
- A. Yes. The above is an unconditional contract to sell specific goods in a deliverable state. Under such a contract title passes at the time the bargain is made, unless the parties indicate a contrary intention. The fact that payment is postponed is immaterial. Since title passed to Brown, risk of loss also falls on him; upon the death of the calf Farmer Smith may recover the purchase price of the animal.
8. Q. Jones contracts for the sale of corn in cribs to Brown. Jones agrees to shell it, haul it to the grain elevator and there weigh it. While on the way to the elevator, the corn is destroyed. Is Brown liable for the corn?
- A. No. Unless a different intention appears, where there is a contract to sell specific goods and the seller is to do something to the goods for the purpose of putting them in a de-

liverable shape, as in the present case, title does not pass until such thing is done.

9. Q. You offer to sell your car to Harry for \$500. Harry refuses to buy unless certain repairs are first made to the automobile. You authorize Harry to take the car to a garage, have the repairs made and deduct the amount of the bill from the \$500. Harry agrees, removing the car to a garage for repairs. While being repaired, the car is destroyed by fire, due to the garage man's carelessness. Can you hold the garage man liable?
- A. No. Title to the car passed to Harry. The rule is that when the seller is bound to do something to the goods, for the purpose of putting them in a deliverable state, title does not pass until such thing is done. This presumption would apply in the present example had you retained possession of the automobile. Harry, however, had possession and, since you parted with the car, you cannot maintain an action against the garage man. You can, however, hold Harry responsible for the purchase price of the automobile. Harry, in turn, being the legal owner, may recover against the garage man.
10. Q. Farmer Jones buys a stack of hay from Smith, it being agreed that twenty-five tons are to be retained by Smith. Before Smith can remove the twenty-five tons so retained, the entire stack is destroyed by fire. Who must bear the loss?
- A. Smith. Title to goods does not pass until they are "ascertained." They are "ascertained" when they are sufficiently identified to be set aside. In the above example, Smith did not segregate the twenty-five tons of hay. Not having done so, the goods are "unascertained" and the loss is Smith's.
11. Q. Jones, wishing to sell Brown a typewriter, asks permission to place it in Brown's office so that Brown may try it for a time. While in Brown's office, and without any negligence on his part, the machine is stolen. Upon whom does the loss fall?
- A. On Jones. Title to the machine does not pass to Brown until he evinces an intention to buy and actually does purchase the typewriter. The mere fact that he permitted Jones to put the typewriter in his office indicates no such intention.

12. Q. Jones, in Baltimore, sells beer to Brown in Philadelphia, Jones to ship the beer to Brown at the latter's expense. Brown later refuses to pay, whereupon Jones sues Brown for the price of the beer. Brown's defense is that a sale of beer in Philadelphia without a license is illegal, and that Jones only has a Baltimore license. Is this a good defense?
- A. No. Title to the beer passes in Baltimore, where the contract is made, and, since Jones has a Baltimore license, the sale is binding.
13. Q. Brown, in Baltimore, orders liquor from Jones, a dealer in Louisville, to be shipped C.O.D. On the way, but before delivery, the goods are destroyed. Upon whom does the loss fall?
- A. On Jones, the dealer. In a sale where delivery is C.O.D., title does not pass until such delivery is actually made. Hence, the loss falls on the seller.
14. Q. Manning, in Baltimore, agrees to ship goods to Newman at Charleston, South Carolina, F.O.B. (Free on Board) at Norfolk, Virginia. Before the goods reach Norfolk they are destroyed. Upon whom does the loss fall?
- A. Loss falls on Manning in Baltimore. Under such an agreement as above, title does not pass until the goods reach Norfolk. Having been destroyed before reaching that city, the loss must be borne by the seller, Manning.
15. Q. Jones, in New York, consigns goods to himself at Kansas City. He forwards a bill of lading, indorsed in blank and with draft attached, to a bank, with directions that the bill be delivered only on payment of the draft. During transit, and before delivery of the bill of lading to Brown, the purchaser, the goods are damaged by flood; they are made practically worthless, and are not received by the connecting carrier in the flooded area. Upon whom does the loss fall?
- A. On Jones. A shipper who has the bill of lading made out to himself or his agent effects a retention of title in himself. A bill of lading is evidence of title; it may indicate that, although the seller made delivery to the carrier, he did not by that act appropriate the goods to the contract, but merely

intended to reserve title or right of possession in himself. One way of retaining title is to send the bill of lading to some third person, usually a banker, with draft attached, which must be accepted, or, if a sightdraft, paid, before the bill of lading can be secured. This reserves title, even though the bill of lading names the buyer as the consignee—the person to whom the goods are consigned.

16. Q. Jones, owner of a lawnmower, leaves it with Brown to be sharpened. Brown sells it to Smith who does not know that Brown is not the actual owner. May Jones recover the lawnmower from Smith?
- A. Yes. When Jones places the mower in Brown's possession, he may recover the machine even against Smith, an innocent purchaser, the theory being that Jones has never parted with legal possession of the machine. Since Brown never had legal ownership of the mower, he could not transfer ownership to Smith. Smith, however, has a right of action against Brown.
17. Q. A merchant sells Collins some furniture on credit, which is duly delivered to him. Collins fails to pay for the goods as agreed. Can the merchant reclaim the goods?
- A. No. This is an outright sale, title passing to Collins. The merchant's remedy is to sue and obtain judgment, then have it satisfied from such assets as he may discover in Collins' possession.
18. Q. Jones buys an automobile from Brown, giving him his check in full for \$500. Brown turns the car over to him. Later, when Brown attempts to cash the check, he finds it worthless. May Brown recover the car?
- A. Yes. One who obtains goods by giving a bad check, in what is intended by the seller to be a cash transaction in which no credit is given, may have the goods taken from him by the seller.
19. Q. Suppose, in the above example, Jones sells the car to Smith, an innocent purchaser. May Brown reclaim the car from Smith?
- A. No. Title passed to Jones when he bought the car. Upon the sale of the car to Smith he acquired title. Brown's remedy would be to sue Jones and obtain a judgment against him.

20. Q. Jones, owning an automobile, sells it to Brown. Brown, however, allows Jones to remain in possession of the car for a few weeks. During this period, Jones sells the car to Thomas, an innocent purchaser. Who owns the car?
- A. Thomas. Brown, by allowing Jones to remain in possession, is precluded from denying Jones' authority to sell it to Thomas.
21. Q. Jones sells Brown coffee, to be loaded by Jones on railway cars at Baltimore for shipment to Brown at Kansas City. The coffee is lost in transportation. Upon whom does the loss fall?
- A. Brown, since title passed in Baltimore. Brown must pay the agreed price and look to the carrier for his remedy, if any.
22. Q. Peter sells vanilla to Jones, a candy manufacturer. Jones uses a considerable portion of vanilla as a test, when a fair test could be made by use of a few ounces. Jones then seeks to return the balance as being of poor quality. Can he do so?
- A. No. Jones has a right to test, but his use in the present example is unreasonable and amounts to an acceptance.
23. Q. Smith sells Peters a bill of goods on credit, to be shipped F.O.B. Chicago to San Francisco. Smith ships the goods via a railroad, the bill of lading being made out to Peters. While the goods are in transit Peters goes into bankruptcy. What can Smith do?
- A. He may stop the goods in transit; if he does, the trustee in bankruptcy cannot claim them as part of Peters's estate. An unpaid seller, generally, has a lien against the goods for the agreed price, unless he agrees to sell on credit; where the buyer becomes insolvent, an unpaid seller may stop goods in transit, even after delivery to the carrier. He has a right also to resell the goods and, finally, a right to rescind the sale. The unpaid seller has these rights, even though title has passed. If title has not passed, the goods are his and he may treat them as such upon non-performance by the buyer. He may even sue the buyer for damages occasioned by the breach.

24. Q. Jones and Company sends Brown and Company a sales memorandum in which it agrees to sell one thousand tons of scrap steel rails. The terms expressed are cash on presentation of draft attached to bill of lading. Brown and Company acknowledges the receipt of this memorandum, stating that the rails are to be of a certain pattern and that they are to come off a certain railway. Jones and Company replies that the rails are to come from a different railroad from the one named by Brown and Company. In the final letter of the exchange, Brown and Company answers that it is immaterial where the rails come from, but insists that the rails be taken up from tracks, not be picked up from sidings along the road. Drafts, the letter concludes, will be honored when the cars arrive. Is this a binding contract?

A. No. The letters show no agreement as to subject matter and terms of the sale. The agreement is too vague and indefinite to be enforced.

25. Q. Jones and Company agrees to buy of Davis and Company all the oyster shells made by the latter for the season beginning September 1st and ending May 1st, 19— which would amount to at least two hundred thousand bushels, and to pay on the first of each week for the shells delivered during the previous week. After seventy-five thousand bushels are delivered, Davis and Company notifies the Jones Company that the contract is at an end because of the Jones Company's failure to pay promptly each week. It appears that, in October, Davis and Company had indorsed one of the weekly bills sent to Jones and Company, "Please send money for these bills promptly." A later bill contained the indorsement, "Terms, cash every Monday." In a letter, Davis and Company insisted that the bills should be "paid promptly every week, as per agreement," and said that if they were not, Davis and Company would not allow Jones and Company to have any more shells. Jones and Company makes no objection to Davis and Company's construction of the contract. Does Davis and Company have a right to put an end to the contract?

A. Yes. The weekly payments agreed to be made to Davis and Company were of the essence of the contract. Since Jones

and Company had often failed to make the payments on time, Davis and Company has a right to end the agreement.

26. Q. Jones, in Minneapolis, without authorization from Brown in Chicago, consigns to him a carload of flour for sale on commission, advising him of shipment and naming a price, but sending no bill of lading. While the flour is in transit, Jones sells it to Collins in Chicago, making out a bill of lading to him, and instructs the railroad company to change the markings on the flour and deliver it to Collins. Through failure of the company to carry out these instructions, the flour is delivered to Brown and sold by him. Collins, meanwhile, pays a draft on Brown for the amount of the flour and receives the bill of lading. Who is entitled to the flour?

A. Collins. The flour was sold to him, and he is entitled to recover the money received from the sale. Brown has no claim to the flour and Collins can recover against him.

27. Q. What is a "warranty" in the law of sales?

A. A warranty is an assertion, expressed or implied, by which the seller insures or guarantees that certain facts in connection with the sale are true, and upon which the buyer is induced to purchase the thing sold. Where there is a breach of warranty, the purchaser may return the goods within a reasonable time and recover the amount paid, or he may retain the goods and sue for breach of warranty.

28. Q. What implied warranties are there in a sale of goods?

A. In a sale, the seller warrants that he has a right to sell; in contracts to sell, he warrants that he will have a right to sell. The seller also warrants that the buyer will have and enjoy quiet possession of the thing sold against lawful claims existing at the time of sale. He also warrants that the goods are free from any incumbrance not known to the buyer.

29. Q. Jones wants to sell his horse to Brown. The horse is at a place where the buyer may inspect him. Brown buys the horse, but he shortly thereafter discovers that the horse is lame. He now wants his money back. Can he get it?

A. No. Whether Brown inspects the horse or not, there is no implied warranty that the horse is sound. Even if the horse

had a hidden disease, Jones would not be liable, unless he had knowledge of the disease.

30. *Q.* Jones sells Brown an automobile, stating that it is a 19— model. Actually, it is a 19— car. Is Jones' statement a warranty?

A. Yes. Here, Brown has a right to rely on Jones' statement that the car is a 19— model instead of a 19— model. This is not an expression of opinion but a fact, and if Brown is induced to buy the car on the strength of that statement, the statement becomes a warranty. Brown, therefore, may return the car within a reasonable time and recover the amount paid; or he may retain the car and sue for breach of warranty.

31. *Q.* Jones sells Brown a certain mule for a reasonable price. The mule has a physical defect which cannot be ascertained upon a reasonable inspection. Jones knows the mule has the defect but he says nothing. Brown, discovering the defect later, sues Jones. Can he recover?

A. Yes. Since Jones has knowledge of the defect, he is obliged to disclose it to Brown.

32. *Q.* Jones offers to sell Brown a horse. When Brown inspects the animal, he notices that the horse has a slight limp. He mentions this to Jones who tells him that the limp is nothing serious. Jones tells Brown that he warrants, or guarantees, the horse to be sound in all respects, whereupon Brown buys the animal. The horse is, in fact, permanently lame. May Brown recover damages from Jones?

A. Yes. Jones has warranted the soundness of the animal.

33. *Q.* The seller of a horse agrees, as part of the contract, to deliver the animal's pedigree to the purchaser. After the sale is completed, the seller refuses to turn over the registration papers. Does the purchaser have a right of action?

A. Yes. He may recover for a breach of warranty, since it is hardly likely that the sale would have taken place at the agreed price but for the fact that the animal has a pedigree.

34. *Q.* The seller of an automobile states that a certain car performs as well as any other car of the same make. On the strength of this statement the deal is closed. Shortly after-

- wards, the purchaser finds that his automobile by no means gives the performance that the car of the same make has been advertised as doing. What remedy has the buyer?
- A. The above assertion is more than mere dealer's talk, and amounts in fact to a warranty. The purchaser, therefore, may either return the car and recover the amount paid, or retain it and sue for breach of warranty.
35. Q. Jones sells a used car to Brown, under a written contract which states that the car is sold "as is." Before signing, Brown expresses doubt about the battery. Jones says, "I will guarantee it for 5,000 more miles. If it gives out before that time, I will give you a new battery." Brown signs the contract and pays for the car. The next day the battery goes dead. Jones refuses to make good. Does Brown have a claim against Jones?
- A. No. If a contract to sell, or a sale, is completely reduced to writing, as in the present case, alleged oral warranties cannot be introduced for the purpose of changing or adding to the written contract.
36. Q. Jones orders a ventilating fan from Brown to air a certain room. Brown agrees to furnish such a fan. Instead, he sends Jones a fan which does not adequately ventilate the room Jones had in mind. Must Jones accept the fan?
- A. No. Where goods are bought for a particular purpose, there is an implied warranty that the goods are fit for that purpose.
37. Q. Brown buys a quantity of blankets wrapped up in bales, the sale being made in a warehouse. Several pairs are pulled out, exhibited and found to be sound. Brown then buys twenty-five bales which he later discovers to be moth-eaten. What are Brown's rights?
- A. In a sale by sample, there is an implied warranty that the goods will correspond with the sample. If the sale is by description as well as sample, the goods must correspond with the description. Hence, Brown can return the blankets and recover the money paid, or he may retain the blankets and sue for breach of warranty.
38. Q. A manufacturer sells Brown, a dealer, some goods, warranting that he has good title and that the goods are saleable.

Brown resells the goods to a customer who finds that they are defective. May the customer sue the manufacturer on the latter's warranty to Brown?

A. No. A warranty by a seller to a buyer is a contract between the two, the rights to which do not pass to one who buys from the original purchaser.

39. Q. Jones sells Brown a quantity of tobacco, delivering a bill which describes it as follows: "24 kegs of tobacco, branded Parkin, at 4 months, weighing etc., at 13½ cents." Jones sells the tobacco on commission. The tobacco is branded as stated in the bill of parcels and is not examined by either party prior to, or at the time of, the sale. The price agreed is a full price for a merchantable commodity. When Brown examines the tobacco after the sale he finds part of it unsound. Does Brown have a claim against Jones?

A. No. There was no implied warranty of quality in this contract, since nothing was stipulated as to the quality of the tobacco. Jones' terms were complied with by the delivery of the tobacco in conformance with the bill of parcels.

40. Q. You buy a loaf of bread at a grocery store, naming the brand, which is handed to you in the original wrapper. You later find a nail concealed in the bread which causes injury to one of your teeth. May you sue the grocery store or must you proceed against the bread manufacturer?

A. You may sue the grocer from whom you bought the bread. When the grocer sold the bread, he impliedly warranted or guaranteed its quality. The concealment of a foreign substance is a breach of that warranty. The grocer, for his part, may recoup himself against loss by proceeding against the bread maker.

41. Q. Jones sells goods to Brown, under an agreement that Brown may return the goods at any time within thirty days if he finds them unsatisfactory. While the goods are in Brown's possession, they are destroyed by fire without fault on Brown's part. Who must bear the loss?

A. Brown. Under such an agreement, the goods belong to Brown. Where one sells merchandise "on sale or return," the sale takes place immediately; title passes at once, subject to the condition that the buyer may return the goods and

revest the title within the stipulated period. Had the goods not been destroyed, Brown could have returned them at any time within the thirty days. Until such return within thirty days, the goods are subject to seizure by Brown's creditors. Risk of loss is on Brown at all times—from the moment he receives the goods until he makes the return, or an offer of return.

42. Q. A contract for the sale of a gasoline engine provides that "if the engine does not do our work we are to ship it elsewhere after giving it a trial." The buyer of the engine fails to return it within the time limited by the contract. A day or two after the time limit expires, the engine explodes and is totally destroyed—without any negligence on the part of the buyer, and before he had tested it. Upon whom does the loss fall?
- A. The buyer. This is an absolute sale with an option on the part of the buyer to cancel the sale and return the engine. Title, therefore, passes immediately to the buyer; he is liable for the contract price.
43. Q. On August 23, 19—, a manufacturer agrees to build certain machines to turn out specified work and to install them in the mill of the buyer within six months, it being agreed that the machines are "to be to the full satisfaction of the buyer as to quality, life, and durability before payment for them will be required." The time is extended to April 22, 19—, when the buyer rejects all the machines. The manufacturer is unable to get his money, even though the buyer has made some use of the machines. Can the manufacturer recover the contract price?
- A. No—since, under the contract, the machines were to be to the full satisfaction of the buyer. Of course, in rejecting them the buyer must act in good faith and be honestly dissatisfied. The manufacturer can only recover his machines. Since there was never a contract—the condition not having been fulfilled—he cannot sue for the purchase price of the machines.
44. Q. Smith, by correspondence, buys a steam engine, pump, etc., on condition that the same be set up on his premises by the seller, for a thirty-day trial period. If the machinery is found unsatisfactory, it is to be made good or moved at the

expense of the seller. The machinery is set up and run for six months, without any objections. Then Smith assigns the machinery, with the premises, to his landlord. The seller seeks to recover the purchase price of the machinery. May he do so?

- A. Yes. Even if Smith has a continuing option to reject the machinery as not being satisfactory, the option is ended and the sale becomes absolute when he assigns the property to a third person.
45. Q. What is a conditional sale agreement?
- A. Such an agreement is one by which goods are sold and title reserved by the seller until a certain condition is performed by the buyer, such as paying the price, for example. Upon breach of the condition, the seller may either retake the goods or sue to recover their value.
46. Q. Mrs. Brown buys a refrigerator at a furniture store. She signs a conditional sale agreement in which it is agreed that she is to pay \$15 monthly until the purchase price is paid in full. The refrigerator is delivered, Mrs. Brown makes three payments, then is unable to continue them. What can the furniture store do?
- A. Under such a conditional sale agreement, the store may retake the refrigerator and retain the payments already made. Theoretically, the store may even resell the refrigerator at a loss, if necessary, and sue Mrs. Brown for the difference between the original purchase price and the amount it was forced to accept on the resale.
47. Q. Jones buys an automobile under a conditional sale agreement whereby he gives \$100 as deposit, agreeing to pay the balance in equal monthly installments until the full purchase price is paid. While in Jones' possession and without any negligence on his part, the car is completely destroyed by fire. Is Jones liable for the full purchase price of the car?
- A. Yes. Under a conditional sale agreement, the automobile company may sue Jones and recover judgment against him for the unpaid balance.
48. Q. Brown agrees with Jones that the latter may send him a washing machine "on trial" for sixty days. While in Brown's

possession the machine is damaged. Upon whom does the loss fall?

- A. On Jones. Under such an agreement Brown has not purchased the machine and title does not pass to him until the sixty days have expired. If Brown does not return the goods within sixty days, title will pass to him; he cannot thereafter return the machine. During the sixty days, unless Brown has, before the end of the period, signified his acceptance, the risk of loss is on Jones—unless the loss occurs by Brown's negligence. Moreover, the creditors of Jones could seize the machine, since Brown has no right in it against Jones' creditors, as he is under no contract to buy it.

49. Q. Jones sells a motorcycle to Brown, payment to be made in six monthly installments. Brown is to have possession at once, but title is not to pass until all payments are made. The contract also provides that, in case of default by Brown, Jones might retake the motorcycle at any time. Brown defaults after the second payment and Jones retakes the motorcycle. Jones then sues Brown for the unpaid part of the price. Can he recover?

- A. No. Courts frequently hold that a seller who has retaken possession, under a conditional sale agreement, cannot thereafter sue for the price. Upon breach by the buyer, the seller may recover either the goods *or* the price, but not both.

50. Q. George buys a piano on a conditional sale agreement. After making a few payments, he sells it to his friend Harry, at a loss, for cash. George makes no further payments on the piano. What can the piano company do about it?

- A. It can retake the piano from Harry. Harry's remedy, in turn, is a suit against George.

FORM 12

CONTRACT FOR THE SALE OF A GROWING CROP OF FRUIT

This agreement made this 2nd day of August, 19—, between John Doe, vendor, and Thomas Brown, purchaser, witnesseth:

It is agreed that the vendor will sell and the purchaser will buy all that

crop of apples growing on the trees of the vendor's orchard, situate in Worcester County, Maryland, for the sum of fifteen hundred dollars, of which five hundred dollars shall be paid before any part of the crop is gathered, and the purchaser shall not be at liberty, without the consent of the vendor, to remove from the premises any part of the crop not paid for until the purchase price thereof is paid.

The fruit shall be gathered when sufficiently mature for gathering, and the purchaser and his workmen shall have, for the purpose of gathering and taking the fruit, full liberty to enter upon the said orchard and trees with ladders and other necessary appliances.

Thomas Brown

PURCHASER

John Doe

VENDOR

Robert Smith

WITNESS

FORM 13

OPTION TO BUY REAL ESTATE

In consideration of the sum of one hundred dollars, receipt of which is hereby acknowledged, I hereby agree to give Thomas Brown the option to buy the following described real estate in the City of Baltimore, State of Maryland, to wit: 3000 Denison Street.

Said Thomas Brown shall have the right to close this option at any time within 30 days from date, and I agree to execute to him or any person named by him, a good warranty deed to said real estate, and to furnish therefor an abstract of title showing said title to be perfect, upon demand therefor. Upon execution of said deed and abstract, I shall be paid the sum of five thousand dollars as full payment of the purchase price of said real estate. I further agree neither to sell nor incumber said real estate during said term, and should I do so I hereby agree to pay the sum of five hundred dollars to said Thomas Brown as liquidated damages. Likewise, should I fail, neglect or refuse to make said deed, or to furnish said abstract as above provided, I hereby agree to pay to him as liquidated damages the sum of five hundred dollars. I waive all claims for damages for failure to close this option.

Dated August 10, 19—.

(seal) John Doe
JOHN DOE

FORM 14

NOTICE OF ELECTION TO EXERCISE OPTION

You are hereby notified that I elect to exercise my option to purchase 3000 Denison Street, Baltimore, Md., upon the terms and conditions specified in the agreement dated August 10, 19—.

Thomas Brown

FORM 15

BILL OF SALE OF RESTAURANT

This agreement witnesseth that John Doe, party of the first part, has this day sold, and does hereby sell and transfer to Thomas Brown, party of the second part, the following described personal property located at 1010 W. Baltimore Street, Baltimore, Maryland, to wit: (here itemize completely the personal property sold) and all fixtures and appurtenances belonging to and forming a part of what is known as Nick's Restaurant, located at the above address, including the good will of the first party thereto, for and in consideration of the sum of five thousand and five hundred dollars, payable as follows: two thousand dollars cash, the receipt of which is hereby acknowledged, and the balance to be evidenced by a promissory note of even date herewith in the sum of three thousand dollars, secured by a mortgage on said personal property. Said note payable one hundred dollars per month until the full amount of said note is paid, with interest at the rate of six per cent after maturity.

Immediate possession to be given said second party.

It is hereby understood and agreed that the said first party hereby conveys all his right, title and interest in and to the groceries and provisions, and the said second party is to assume the payment of any indebtedness thereon if there be any indebtedness thereon remaining unpaid on said goods taken and no more. The said first party warrants the title to the fixtures.

Witness my hand this 3rd day of April, 19—.

John Doe

VENDOR

Robert Smith

WITNESS

Accepted this 3rd day of April, 19—.

Thomas Brown

BUYER

FORM 16

CONDITIONAL SALES AGREEMENT

This agreement, made this first day of November, 19—, between William Taft, of Baltimore, Md. called the vendor, and Thomas Gay, called the vendee or buyer, witnesseth:

Whereas the vendor has this day delivered to and hereby agrees to sell to the vendee, for the sum of three hundred dollars, upon the conditions hereinafter set forth, the following personal property (describe exactly the personal property to be sold).

The vendee agreeing to and does receive said property, and to pay the vendor therefor, at his place of business said amount as follows, to wit:

The sum of one hundred dollars upon the execution hereof and the sum of twenty-five dollars on the first day of each and every week hereafter until the whole sum first above mentioned, or any judgment obtained therefor, is fully paid, when title to said property shall vest in the vendee; but until then title shall remain in the vendor.

It is further agreed that in the event of failure by the vendee to pay any installment, as it becomes due, or in case the vendee removes the property from his present residence or place of business, without the written consent of the vendor, or in case the property is destroyed in any manner, the whole of the said sum shall immediately become due, and the vendor may take possession of such property with or without legal process and sell the same according to law, in which case it is expressly understood and agreed the vendor may retain all installments previously paid as and for compensation for the use of said property by the vendee, and the vendee will pay any deficiency arising on account thereof together with the expense of retaking and sale thereof.

No verbal contract or agreement contrary to any of the terms conditioned in the foregoing contract has been made.

In witness whereof we have set our hands.

William Taft

VENDOR

Thomas Gay

VENDEE

John Doe

WITNESS

FORM 17

CHATTEL MORTGAGE

Note: A chattel mortgage is one of the most common forms of securing the purchase money. In the absence of statute, no particular form is necessary to create a valid chattel mortgage. All such mortgages are required, by state law, to be recorded or filed and must usually be acknowledged or attested in the same way that a deed of real property is. Many states also require the affidavit of the mortgagor or mortgagee, or both.

This chattel mortgage, made this 17th day of August, 19—, John Doe to Richard Roe, witnesseth: that for and in consideration of the sum of nine hundred dollars, the said John Doe doth hereby bargain and sell unto Richard Roe the following property: 19— Chevrolet, coach, serial number 37167, engine number AA591679, provided, however, if the said Richard Roe shall pay the said John Doe the aforesaid sum of nine hundred dollars, with interest, on or before the 17th day of August, 19—, then these presents shall be void. And it is also agreed that until default be made in the payment of the aforesaid sum of nine hundred dollars, with interest, the said Richard Roe shall possess the property hereby mortgaged. But in case of default, then the said Richard Roe does hereby declare his assent to the passage of a decree for the sale of the property hereby mortgaged, in accordance with the Code provisions provided therefor.

(seal) *John Doe*

MORTGAGOR

Richard Roe

WITNESS

CHAPTER VIII

Insurance

INSURANCE IS a method by which man guards himself against the hazards of life.

More than a hundred years ago, a committee of the British House of Commons, investigating insurance, laid down the principle that "whenever there is a contingency, the cheapest way of providing against it is by uniting with others, so that each man may subject himself to a small deprivation, in order that no man may be subjected to a great loss."

This principle, first enunciated in 1825, has since proved its soundness and wisdom. Insurance today is a big business, represented by nearly one hundred and thirty million policies of all kinds, and some \$124,000,000,000 of insurance in force.

Unfortunately, few of us ever take the time and trouble to read our policies. For the most part, we accept without question what our agent tells us about them, never doubting his interpretation of the policy or his authority to act for and on behalf of his company. Such implicit faith, though touching, often gives rise to serious difficulties, including law suits.

A policy, it must be remembered, is a contract containing the terms agreed upon by the company and policyholder; it is interpreted and governed by the same principles controlling other contracts.

How insurance policies are interpreted, what constitutes fraud and misrepresentation in the application for insurance, the various

types of policies, and the scope of the agent's authority to bind his company are some of the matters dealt with in this chapter.

1. *Question:* What is insurance?

Answer: It is an agreement by which one party, for a consideration, usually money, promises to pay a certain sum upon the destruction or injury of something in which the other party has an interest. The insurer is sometimes called the underwriter. The insured is also called the assured.

2. *Q.* What is meant by a premium?

A. It is the agreed consideration paid by the insured to the insurer, usually money.

3. *Q.* What is a policy?

A. It is the written contract embodying the terms agreed upon between the parties. It is usually issued upon the application of the insured in writing.

4. *Q.* What is meant by the "loss"?

A. It is the happening of the event insured against, and the consequent damage to the subject matter.

5. *Q.* What is life insurance?

A. This is a contract by which the insurer, in consideration of a certain premium, undertakes to pay the person for whose benefit the insurance is made a stipulated sum upon the death of the insured.

6. *Q.* What is meant by the term "double indemnity," as contained in a life insurance policy?

A. This provision stipulates that, in the event the assured meets with an accidental death while a passenger on a common carrier such as a train, street car, taxicab, steamer, airplane, etc., the company will pay double the face value of the policy. Thus, where an individual is accidentally killed while a passenger on a train, and has a \$5,000 life policy containing a "double indemnity" clause, his beneficiary or estate will receive \$10,000.

7. *Q.* What is endowment insurance?

A. It is an agreement by which the insurer, for a consideration, promises to pay a specific sum of money at a time stated,

or at the insured's death, if it occurs earlier than the date fixed for payment.

8. *Q.* What is accident insurance?
A. This provides for specified payments in case of an accident resulting in bodily injury or death.
9. *Q.* What is casualty insurance?
A. It is a contract which provides for payments in case of loss or damage to property, caused by accident. For example, the loss of horses or cattle, theft of valuables, breakage of plate glass, etc.
10. *Q.* What is fire insurance?
A. It is a contract by which the insurer, in consideration of a stipulated premium, undertakes to compensate the insured against all loss or damage sustained to a certain amount in the property mentioned in the policy by fire, during the time agreed upon.
11. *Q.* What is marine insurance?
A. This is a contract of indemnity by which the insurer, for an agreed premium, undertakes to indemnify or compensate the insured to the extent of the amount insured against such perils of the sea as are enumerated in the policy.
12. *Q.* What is employer's liability insurance?
A. It is a contract by which the insurer agrees to reimburse an employer for any loss due to his liability for damages to an employee injured in his service.
13. *Q.* What is fidelity insurance?
A. It is a contract which protects the insured against loss due to the default or dishonesty of an employee.
14. *Q.* What is assessment insurance?
A. Such insurance provides that money to pay a death loss or claim be collected by an assessment made upon those members who survive the policy holder, the insurance upon whose life is paid. In standard insurance companies, the amount of the premium is definitely fixed. In an assessment insurance policy, the right is usually reserved to increase or lower the rates of assessment or premium. Hence, under an assessment policy, the premium is not definitely

fixed and the members may be called upon to pay a much larger premium or assessment than they had anticipated.

15. Q. What is credit insurance?

A. This is a policy by which the insured is compensated against loss by the failure of his customers to pay for goods sold to them. In such policies the insured is frequently called the "indemnified" and is so referred to in the policy.

16. Q. What is industrial insurance?

A. This is a life insurance policy for a small or limited amount in consideration of a premium, payable in small installments and collectible weekly or at some other short, periodic interval. It includes both adult and child insurance and amounts, in fact, to burial insurance.

17. Q. What is strike insurance?

A. This type of policy provides that the insurer shall, for a consideration, indemnify and guarantee individuals or business firms against damage or loss due to, or by reason of, strike.

18. Q. What is title insurance?

A. This contract indemnifies the owner or mortgagee of real estate from loss by reason of defective titles, liens or incumbrances.

19. Q. What is meant by insurable interest?

A. This is a legally recognized interest in the person or thing insured which the one taking the insurance policy must have. Generally, the reasonable expectation of benefit or advantage from the continued life of another creates an insurable interest in such life. The same applies to an interest in property.

20. Q. Tom would like to take out a policy of insurance on his friend's house. He has no interest in it. Will he be issued a policy?

A. No. He lacks an "insurable interest" in his friend's property. The law frowns upon and forbids such insurance, viewing the transaction in the nature of a gambling wager which might lead to the property's destruction.

21. Q. Mary takes out a policy on her own life, making her lover the beneficiary. She pays the first three premiums, her

lover the remainder. After Mary's death, the boy friend demands payment on the policy from the company. The company refuses. Who is right?

- A. The company. The boy friend has no "insurable interest" in Mary's death.
22. Q. Aunt Ada has reared Esther, her thirteen-year-old niece, in the expectation that the child would be a help in the aunt's old age. A \$10,000 policy is taken out by Aunt Ada on Esther's life. A year later, the niece dies and her aunt seeks to recover on the policy. Can she do so?
- A. Yes. Mere relationship alone is insufficient to create an "insurable interest," except in the case of husband and wife, but in the above example there is more than mere relationship. There is, in addition, the expectation of benefit or support to be derived from the continuance of the life of the insured; there is also a reasonable chance that the services will be rendered, even though Esther never has the opportunity to support Aunt Ada.
23. Q. Jim, a friend, borrows \$5,000 from you. To protect your interest, you insure his life for \$7,500, making yourself the beneficiary and paying the first premium. Later, Jim pays the debt in full. You continue to pay all premiums on the policy until Jim's death. May you recover on the policy?
- A. Yes. In most states, however, you may retain only the amount of premiums you paid on the policy, the balance going to Jim's estate. As a creditor, you have an "insurable interest" in Jim; also, the amount of insurance is reasonable when compared to the risk. But when the debt is paid the "insurable interest" is lost, and you will be able to retain only the premiums you have paid.
24. Q. A daughter insures her father's life—without his knowledge or consent. After the father's death, the daughter seeks to recover the face value of the policy. May she?
- A. No. Strictly speaking, it is necessary for the beneficiary to give his consent before an insurance contract becomes binding. Upon the death of the father, all that the daughter can recover is the money she paid in as premiums.
25. Q. What is the difference between a warranty and a representation in insurance law?

- A. A warranty is an essential part of the contract, agreed by both parties to be essential. A representation is but a collateral inducement. A warranty is always written on the face of the policy. A representation need not be written in the policy and may be merely an oral statement. A warranty is conclusively presumed to be material, so that upon its breach the company can cancel the policy. The importance of a representation, on the other hand, must be proved by the insurance company before it can avoid the policy. Finally, a warranty must be strictly complied with; a representation need only be *substantially* complied with.
26. Q. In an application for insurance on his life Brown is asked: "Have you, at any time, had any disease of the heart?" To this he answers: "No." The application refers to all answers as "warranties." A photostatic copy of the application is pasted on the policy and expressly incorporated in it. In the policy, however, all answers are called representations. Brown passes the physical examination and a policy is issued to him. A year later, he dies of heart disease. The company refuses to pay because it learns, after his death, that Brown had long been affected with a heart disease, difficult to detect. His family doctor had discovered the ailment several years before, but had never told Brown for fear it would more seriously impair his health. The ailment, however, did not interfere with Brown's work. May the beneficiary recover on the policy?
- A. Yes. The controlling question here is whether Brown's statement is a warranty. A warranty is a stipulation, material to the risk, on the exact truth and fulfillment of which depends the insurance company's obligation to pay. With the exception of marine insurance, a warranty must be a term of the policy, or, if in a separate paper, the paper must be permanently attached to and made an integral part of the policy. If the paper is not physically attached to the policy, there must be an express provision in the policy incorporating the statement. Any clause expressly called a warranty is usually interpreted as such, but this is not the invariable rule. Brown's answer is called a warranty, is physically part of the policy, incorporated by express state-

ment, and is material to the risk. This makes the answer, at first blush, a warranty. It will then have to be literally correct or the policy will be avoided, since an unqualified statement as to health, warranted to be true, usually nullifies the policy if, in fact, it is false. In warranties, the good faith of the applicant is immaterial.

But is Brown's answer a warranty? Although the application calls it one, the policy itself refers to it as a representation. This creates an ambiguity which is resolved against the company. Hence, Brown's answer is a representation and will not be strictly construed against him. The insurance company, therefore, must prove that the fact is material and the representation false. Brown's statement is only an honest expression of his opinion. It is not fraudulent. His heart ailment did not interfere with his work and, at the time of the application, was not present in an advanced stage. In short, Brown answered the question in good faith; his beneficiary could recover.

27. Q. In an application for a fire insurance policy Brown, owner of a factory, in answer to the question, "Who sleeps in the store?" wrote, "Watchman on premises at night." A few days later, his factory burns down. The insurance company has evidence that Brown did not employ a watchman the night of the fire. Can the insurance company refuse payment?

A. No. This statement, made a warranty by the policy, refers only to the time when the contract was made and was not a warranty that a watchman would be kept on the premises continuously.

28. Q. Prior to taking out a life insurance policy, Jones, a heavy drinker, consulted two physicians about his ulcerated stomach. In his application for insurance he states that he has not consulted a physician within five years from the date of the application, and that he uses liquor sparingly. Upon Jones' death, his wife, the beneficiary, attempts to recover on the policy. Will she succeed?

A. No. A false representation as to health will not necessarily bar recovery on a policy. The representation, to bar recovery, must be material to the risk. In this case, however, the

false statement is material, for if Jones' ulcers had been known to the company, the company would probably have turned down the application, especially since the falsity of the statement was coupled with the additional fact of Jones' drinking.

29. Q. In his application for life insurance, Smith fails to mention that he has a perforated ear drum. A few years after the policy goes into effect, Smith dies of a heart ailment. The insurance company refuses to pay the face amount of the policy to the beneficiary. Is it justified in so doing?

A. No. In this case, there is no connection between the perforated ear drum and the fatal heart disease. Hence, the company is bound to pay.

30. Q. In his application for life insurance, Garfield states that he has suffered no ill health for five years and that he has not consulted a physician for ten years. Actually, a physician treated him twice for indigestion shortly before Garfield made out the application. After the first premium is paid, Garfield dies from a heart attack. The company refuses payment. What is the result?

A. In a similar case, the court decided that the insurance company would have to pay. The court held that Garfield's failure to mention that he had indigestion several weeks before making out the application and had received treatment by a physician was not sufficient bad faith to justify the company's refusal to pay.

31. Q. An insurance agent obtains from Mrs. Holmes an application for insurance upon the life of her husband. The application is signed in blank (without the relevant information being filled in). The agent fills in the application, first making inquiries of Mr. Holmes who answers correctly the questions asked by the agent. However, the agent inserts incorrect statements in the policy. The application is sent to the insurer who issues a policy thereon, without further inquiry. After the death of Mr. Holmes, the insurer refuses payment on the ground that the agent inserted in the application several false material answers to questions asked Mr. Holmes. The insurer contends that if the agent had inserted the correct answers given by Mr. Holmes, the

company would never have accepted the risk. Does the company have to make good on the policy?

A. Yes. The agent is acting for the insurer and not for Mr. Holmes, the insurance company being charged with knowledge acquired by the agent. Hence, the company will be bound. Stated another way, the answers are those of the agent, not Mr. Holmes, and the insurer will be bound by the act of its agent.

32. Q. In filling out an application for life insurance, Brown, on the advice of the agent, omits the fact that he is a member of the U. S. Naval Reserve and therefore liable to naval service. Instead, he describes himself as a fisherman. His connection with the Naval Reserve is communicated by the agent to the district manager of the company who fails to disclose the fact to the home office. The policy is issued by the company. While in the Naval Reserve, Brown is lost at sea. The insurer refuses to pay on the policy. Must it do so?

A. Yes. The insurer is liable, the company being charged with the knowledge of its district manager. When the district manager accepted the premium with knowledge of the concealment, the insurer waived its defense.

33. Q. Brown, a farmer, orally applies for hail insurance on a certain described crop of grain. He fails to mention that there is a chattel mortgage on the crop, and the insurer's agent does not make any inquiry in that respect. The policy is issued and accepted by Brown who does not read it. The policy, however, contains a clause making it void if there is a chattel mortgage on the crop of grain. Farmer Brown pays the premium and lays the policy, still unread, in his bureau drawer in the belief that his interest in the crop is protected. After the crop is destroyed by hail, Brown learns for the first time that he is actually not protected. The insurer refuses to pay, on the ground that Brown failed to disclose the chattel mortgage. Can the assured recover?

A. Yes—in most states, on the theory that the farmer was misled into thinking that he had an adequate policy and that the agent was neglectful in making proper inquiry into the matter. Under the above facts, the insurer is probably pre-

vented or "estopped" from denying the soundness of the policy he sold.

34. *Q.* A fire insurance policy contains a clause that the company will not be liable until the premium is actually paid in full. A later condition provides that the insured should be allowed a certain time to pay the premium but that if the insured does not pay the premium within that time, the policy is to be null and void. The property is destroyed before the premium is paid, as well as before the expiration of the time limited for its payment. Can the insured recover on the policy?

A. Since the fire occurred before the payment of the premium, the risk never attached and the company is not liable.

35. *Q.* An insurance policy on a building contains a stipulation that if the building is used to carry on the trade of a carpenter, etc., the policy is to be void so long as any portion of the premises are so used. While the policy is in force, a box factory is established on the premises but work there is temporarily suspended for some months before the building is destroyed by fire. After the fire, the assured seeks to recover on the loss. May he?

A. Yes. The fact that the building was used temporarily for carpenter work merely suspends the policy for that period of time. When the box factory suspended operations, the policy again went into effect.

36. *Q.* A fire insurance policy provides that it shall become void if the building described therein becomes vacant or unoccupied and remains so for ten days. The assured, occupant of the house, moves on June 18th to another city and does not return until July 6th. The house is destroyed by fire the day before her return—that is, on July 5th. Although the furniture had been removed, the husband occasionally visited the former home. May the assured recover on her policy?

A. No. The policy is cancelled under the clause against vacancy; that the husband occasionally visited the premises does not alter the fact that, for legal purposes, the house was vacant for more than ten days.

37. Q. A fire insurance policy provides that the insured is not to keep on the assured premises any articles deemed hazardous, except as provided in the policy or thereafter agreed to by the company. This agreement is later changed by the following indorsement on the policy: "Permission given to keep one barrel of benzine in tin cans for use on the premises." A barrel of benzine is brought in; it is being emptied into a large tin can when it explodes, setting fire to and destroying the building. May the insured recover?

A. Yes. There is a substantial compliance with the terms of the indorsement in keeping the benzine in one tin can.

38. Q. A fire insurance policy provides that it shall be void if any change takes place in the interest, title or possession of the property, whether by legal process or by a voluntary act of the insured. A few days before the building is destroyed by fire, the assured enters into a contract of sale for the building, but fails to notify the company. After the fire, the assured seeks to recover on the policy. May he?

A. No. Entering into a contract of sale is a breach of the condition imposed by the company; the assured cannot recover on the loss.

39. Q. Brown's fire insurance policy on his toy shop insures "fancy goods, toys and other articles in his line of business." A clause written with pen and ink in the body of the policy grants "permission to keep fireworks on hand." Under a printed clause, however, the insurance is avoided if the insured "keeps" certain hazardous articles, including fireworks. Toy shops usually have fireworks in stock, and there are fireworks worth about \$35 on Brown's shelves for several months. No fireworks are on hand at the time of the fire. May Brown recover on the policy when his toy shop burns down?

A. Yes. Where a written provision conflicts with the printed clause, the written provision governs. Written provisions are for the particular instance. Printed clauses are for general use. Most courts would probably find that the parties intended to allow the keeping of fireworks, especially since they had nothing to do with the loss.

40. Q. Brown, deeply in debt, insures his life for \$35,000, making his wife the beneficiary. At the time he takes out the insurance, he fully intends to mature the policy by committing suicide in order to make provision for his wife. The policy is expressly made "incontestable" after it has been in force two years from the date of issue. It stipulates that the insurance is to take effect only on delivery of the policy and payment of the first premium. By another clause the policy is avoided "if the insured shall commit suicide within two years from the date hereof." The policy is dated January 12, 19—. It is delivered and the first premium paid on January 30th, of the same year. On January 20, 19—, two years later, Brown kills himself. The insurance company notifies the beneficiary on the twenty-fifth of the same month that it will not pay because of the suicide. May the wife recover on the policy?

A. Yes. The "suicide" clause makes the policy void if the insured commits suicide within two years from the "date hereof" which means the date of the policy, January 12th. The suicide took place January 20, more than two years after the "date hereof"; therefore, the suicide clause does not bar recovery.

41. Q. Brown takes out fire insurance on his farm dwelling house with one insurance company and insurance on his furniture with another company. The policy on the house provides that "this entire policy shall be void if the insured building be or become vacant or unoccupied and so remain for ten days." The policy on the furniture provides that "The insurance company shall not be liable for a loss to the insured property by lightning." The application for each policy, signed by Brown, contains a clause providing that "No agent shall have power to waive any provision in the policy nor shall any waiver be valid unless in writing, indorsed on the policy at the home office by the President, Vice President or Secretary."

Brown tells Smith, the general agent of the fire insurance company which wrote the insurance on the house, that he will close the farmhouse the following month and move into the city for the winter. Smith gives his consent, delivering

the policy to Brown, but without any indorsement. A month later, Brown closes his farmhouse and takes up residence in town. Later, the farmhouse is struck by lightning; fire springs up and the house and furniture are totally destroyed. No indorsement had been made on the furniture policy, either.

On learning of the loss, the insurance company which covered the furniture writes Brown, advising that his claim will be considered at a meeting of the Board of Directors of the company. Both insurance companies, however, deny liability. Can Brown recover against either or both companies?

- A. He can recover against neither. He cannot recover on the policy on the house, since Brown violated the clause forbidding vacancy. The "vacancy" clause is a condition, a breach of which gives the insurance company the option to cancel. It is true that Smith, a general agent, had all the powers of his company with respect to making the contract. He even had the power to waive the requirement of an indorsement and did so by delivering the policy with knowledge of the breach. However, a general agent's oral promise, made before or at the time the policy is written, to waive a future breach of a condition in the policy, is not binding on the company, such oral evidence being inadmissible to contradict the policy. Brown could not recover on his furniture policy, since the loss by lightning was an "excepted" risk—that is, one not covered by the terms of the policy.
42. Q. Brown informs an insurance company agent that he wishes to apply for life insurance as he is about to enter military service. He knows this is contrary to a condition in the proposed policy. The agent, however, tells Brown that the company will not enforce the condition. Thereupon, Brown makes application and receives a policy containing a clause that the policy shall become void if Brown engages in military service without the consent of the company indorsed on the policy. Brown, without such indorsed consent, is drafted into the army and is killed in action. His beneficiary seeks to recover on the policy. Can he?

- A. No. The agent's verbal agreement cannot be introduced to contradict the policy. Even if the agent's statement had been reduced to writing, it could not contradict the policy, since the company's written indorsement was not obtained.
43. Q. Brown obtains insurance on his printing office and bookbindery. The policy contains a printed condition relieving the insurer for any loss or damage by fire caused by camphene or other inflammable liquids. In the description of the property insured is found the clause, "privileged for printing office, bindery, etc." The property is destroyed by a fire caused by the ignition of camphene, kept by Brown for the purpose of cleaning the presses. Is the insurer liable under the policy?
- A. Yes. A general usage may be shown as existing among printers to keep camphene in their shops, and that such usage is necessary in the conduct of the business.
44. Q. Dick files an application for a \$5,000 policy on his life, payable to his wife. He pays his premium, the receipt for it reading as follows: "The insurance is not to be in force until the application is approved, accepted, and the policy delivered by the company to the applicant while in good health." Dick passes the physical examination, but the company decides, because of his past habit of drinking, to write the insurance for \$2,500 only. A policy in that amount is mailed to the insurance agent, with instructions to deliver it to Dick. The agent tells Dick by telephone that his policy arrived that morning. That same afternoon, Dick is killed in an automobile accident. May Dick's widow collect on the policy?
- A. Yes, \$5,000. An oral contract of life insurance is legal, unless a state law requires it to be in writing. Dick was in good health when the policy was mailed to the agent. He also had a right to believe that the policy was written in accordance with his application. Otherwise, being in good health, he could have insured with another company. The first premium had been paid, and when the agent informed Dick that his policy had arrived the company became bound.

45. Q. While chopping wood, a piece of it flies up in Brown's face, causing an abrasion of the skin. Infection sets in, resulting in blood poisoning and death. Two years before, Brown had suffered from a severe attack of blood poisoning. He had recovered but was more susceptible to infection than the average person. May Brown's beneficiary recover on his accident insurance policy, insuring against the results of bodily injuries caused directly by violent and accidental means?
- A. Yes. Since Brown did not intend or expect to get blood poisoning when he chopped the wood, the result of his act is accidental. The fact that Brown's system was weakened by the previous attack of blood poisoning is immaterial, since this was not an active factor. In general, accident policies are construed against the company and in favor of the insured.
46. Q. Brown takes out an accident policy. Subsequently, he dies from an infection caused by the extraction of a tooth. Is the insurer liable?
- A. Yes. Though the extraction of the tooth is intended, and hence not accidental, the result is unexpected; the company, therefore, would be liable.
47. Q. Brown takes out an accident policy. Undertaking to swim against a swift current, Brown so over-exerts himself as to cause a hemorrhage, from which he dies. Is the insurer liable?
- A. No. Here, the acts which led to Brown's death could normally be expected, even though the resulting injury was unexpected.
48. Q. Brown, heated from playing a strenuous game of tennis, takes (as he frequently does under similar conditions) a cold bath which unexpectedly causes a heart attack, disabling him for several months. He seeks to recover under his accident policy. Can he do so?
- A. No. Since Brown took the cold bath voluntarily to cool off, without slipping or falling, with the water at the intended temperature, the unusual result was not caused by accidental means within the terms of his policy.

49. Q. Brown, suffering from a cold, takes a fatal overdose of some medicine and dies. Is the insurer liable under an accident policy?
- A. Yes. The overdose was accidental, since Brown merely intended to take a safe quantity of medicine.
50. Q. Brown places an unclean hand upon a boil which becomes infected and from which he dies. Is the insurer liable under an accident policy?
- A. No. There is nothing accidental about this death. If Brown did not, in fact, foresee infection, he should have done so.
51. Q. Nurse Jones has an accident policy. She dies from inhaling streptococcic germs while attending a patient ill from blood poisoning. Would the insurer be liable?
- A. Yes.
52. Q. While wearing a new shoe, Brown's toe becomes bruised; blood poisoning sets in from which Brown dies. Is the insurer liable under an accident policy?
- A. Yes. If the circumstances are such as to make the accident, and not the disease, the proximate cause of the death, the insurer will be liable, as for death due to accidental means. In this case, the accident was due to Brown's rubbing his toe in the new shoe, even though he actually died from blood poisoning, a disease.
53. Q. Brown's accident policy contains a clause relieving the insurer from liability for injury by taking poison. Brown drinks carbolic acid, thinking it to be peppermint, and dies from the poisoning. Would the insurer be liable?
- A. Yes. Generally, such clauses exempt the insurer where the insured takes poison intentionally, not when he takes it mistakenly.
54. Q. Brown's policy contains a clause exempting the insurer where the insured's injuries are due to his voluntary and unnecessary exposure to injury. While painting a house, Brown falls off the scaffold, breaking his leg. The insurance company refuses to pay on the ground that, in voluntarily exposing himself to injury, Brown violated his policy. Is the insurer liable?

- A. Yes—since the exposure, though voluntary, was necessary in Brown's business.
55. Q. Smith's accident policy contains a clause relieving the insurer from liability for death while engaged in military service. Smith is drafted into the army. While riding in his jeep from one sawmill to another, supervising construction, Smith's vehicle skids and he is killed. Is the insurer liable?
- A. Yes. Such clauses as the one described above limit the company's responsibility only when the injury results from some cause peculiar to the military service. It does not apply where the injury, as in the present case, is one common to civilian life as well.
56. Q. An insurance company was incorporated on July 24th. On August 7th, Smith applies for coverage on his house, the application being subject to the approval of the Board of Directors. The application is handed to one of the directors on August 9th, and on August 22nd he delivers it to the secretary of the company. A quorum not being present at the time, no business is transacted. A special meeting of the Board is held on August 19th, but the application is not considered. On August 30th, the house is destroyed by fire. At the first regular meeting of the Executive Committee, held on September 25th, the application is rejected and this action is approved by the Board. Brown seeks to recover on his policy. Can he?
- A. No. In a similar case the court ruled that the company had not failed to act on the application within a reasonable time and its conduct was not calculated to mislead Smith.
57. Q. An insurance broker is authorized to take applications and write policies. Blank forms for the purpose are supplied him by the four or five fire companies he represents. You telephone the broker, asking him to insure your house for three years for \$2,000. The broker tells you that you are covered, later making a notation to that effect on his file card. The following day, your house burns down before the broker sends you the policy. Are you covered?
- A. Yes, upon your offer to pay the premium. Insurance contracts, to be binding, need not be in writing. Both you and the broker have agreed on the name of the insured, the

property, the amount of insurance and the duration of the coverage. Although nothing is said about the premium, the law presumes the customary rate is intended. And, though the premium is not paid before the fire occurs, the law will assume that credit was extended by the broker.

58. Q. You make a binding contract for the purchase of a house. After the contract is completed, but before the deed is turned over to you, the house is destroyed by fire. The seller is still in possession of the house and had previously taken out a policy of fire insurance on it. Both the seller of the house and you, as the buyer, claim the insurance money. Who is entitled to it?

A. The seller. The contract of insurance is purely personal between the company and the seller of the house, and you, as buyer, have no rights in it.

59. Q. Smith, an insurance agent, tenders to Brown a life policy containing a provision that it shall not take effect until actually delivered to the insured while he is in good health and the first premium is paid in cash. Brown explains that he does not have any ready money, offering to give his note, at six months, for the premium. The agent accepts the note and delivers the policy. Brown dies within the six months. Must the insurance company pay?

A. Yes. Assuming that he has the requisite authority, the agent can remove the condition requiring prepayment of the first premium in cash. The insurance company, by its agent's duly authorized act, "waives" the condition and will be bound to pay on the policy.

60. Q. Brown's policy contains an anti-military service clause. Enlisting in the army, Brown serves without injury and is discharged. He informs the agent of these facts, offering to pay the next accruing premium. The agent accepts it, saying that, while the policy had been forfeited, the company would waive the forfeiture. A few days after the premium is accepted, Brown dies and the insurance company now refuses to pay on the policy. Can it be compelled to do so?

A. Yes. In accepting the premium, the agent waived the forfeiture and the insurance company will be bound.

INSURANCE

61. Q. Smith's fire policy contains a provision that no action shall be brought on it unless satisfactory proofs of loss are furnished within sixty days after the fire. Immediately after a fire, Smith applies for forms on which to make his proofs of loss. He is told by the insurance company that such proofs are unnecessary, since liability under the policy is denied because of Smith's breach of the condition against other insurance. A few weeks after the sixty-day period is up, Smith, through his lawyer, seeks to recover on the policy. The company now defends, on the ground that proofs of loss were not filed as required within the sixty days. Is such a defense good?
- A. No. When an insurer denies all liability under the contract, the courts generally hold that all conditions still to be performed by the insured are waived.
62. Q. Brown's life insurance policy contains a provision excepting from the risks covered by the contract death or injury suffered while in military service. Brown is killed while engaged in battle, but the sympathetic insurance company, with full knowledge of the facts, agrees to waive the exception. Later, the company changes its mind and refuses to pay the beneficiary. Can it be compelled to do so?
- A. No. The original contract does not cover such a loss. The promise of the company to pay is unenforceable, unless there is a legal consideration to support the new promise. Since there was no such consideration in this case, the company would not be bound.
63. Q. Brown, holder of a life policy, fails to pay his premium, due on June 15th. On June 25th, he pays the premium to the agent who has knowledge of all the facts. On June 30th, Brown dies and the insurance company refuses payment on the policy. Is it justified in doing so?
- A. No. The acceptance of an overdue premium by an agent having authority to do so shows an intention to continue the policy in full force.
64. Q. A provision on Jackson's fire insurance policy declares that the policy will be null and void should the insured procure other insurance without the consent of the company, to be

noted on the policy. Without such consent, Jackson procures other insurance, notifying the fire insurance company which makes no response to the notice. Two months later, a fire occurs and the insurer refuses to pay on the policy. Is it correct in doing so?

A. No. When the company first received notice, it had a right to take advantage of the provisions of its policy. When it remained silent for two months after notice was given it, Jackson was deprived of any opportunity to protect himself by getting still other insurance. The insurance company, by its silence, waived its rights to avoid the policy.

65. Q. Brown's fire insurance policy contains a provision that "agents of the company are not authorized to make, alter or abrogate contracts or waive forfeitures." The policy also provides that a failure to pay any premium or note at maturity renders the policy null and void. The evidence shows that the company did, in fact, allow its agents to extend the time for the payment of premium notes, despite the restriction mentioned in the policy. Brown, after the maturity of a premium note, secures an extension of time from the agent and dies before the expiration of the extended time. The insurer refuses payment on the policy. Can it be compelled to pay?

A. Yes. Brown's beneficiary can, through counsel, introduce evidence tending to prove that the agent permitted an extension of time in which to pay the note, and that it was customary for the company to waive its policy provisions with reference to the payment of premiums.

66. Q. Smith takes out a life policy, making his wife unconditionally the beneficiary. After a quarrel, Smith and his wife live separate and apart. Smith refuses to pay the premiums. How may the wife protect her interests in the policy?

A. By continuing to pay the premiums on her husband's policy. Of course, where the policy reserves the right on the part of the insured to change the beneficiary, Smith can defeat his wife's interest by changing the beneficiary.

67. Q. Brown takes out a life insurance policy, designating his wife, Helen, as beneficiary. Subsequently, Brown divorces

Helen and marries Ruth. Upon Brown's death, his will is read in which there is a provision making Ruth his beneficiary. May Ruth collect under the policy?

- A. No. A beneficiary can be changed only in the way prescribed by the policy. Even a clearly proved intention to make a change is not sufficient if the formal requirements are lacking.
68. Q. Brown takes out a policy on his own life, payable to his brother, reserving to himself the power to change the beneficiary. After Brown's subsequent marriage, he writes to the company stating that he wishes to make his wife the beneficiary. A blank form is sent him for this purpose which he fills out and executes in the presence of a witness. However, Brown is suddenly taken ill and dies before the form with the policy is mailed to the company. Who is the beneficiary under his policy?
- A. The brother. At the time of his death, the company had not received the change of beneficiary; hence, Brown's brother would receive payment.
69. Q. Jones takes out a life insurance policy, making his wife the beneficiary. The wife subsequently poisons Jones who dies. Who is entitled to payment on the policy?
- A. Jones' estate will get it all, the wife being excluded from taking any share.
70. Q. May a life insurance policy be assigned for the benefit of creditors?
- A. Yes. Usually, this does not require the consent of the company.
71. Q. An insurance company wrongfully cancels Brown's life insurance policy. What can Brown do?
- A. He can, through his lawyer, maintain an immediate action for damages. Most courts will allow him to recover all premiums paid, with interest from date of each payment; or, where Brown's health is such at the time of the breach that this measure of damages fails to compensate him for his loss, he may be given such sum as will enable him to procure a like policy in another company. Instead of bringing the action for damages, Brown may, through his counsel,

bring an action to have the policy restored or put in effect. Finally, he can tender the premiums and await the maturity of the policy before action is begun.

FORM 18

NOTICE OF LOSS UNDER FIRE INSURANCE POLICY

TO THE BLANK INSURANCE COMPANY:

You are hereby notified that on the *first* day of *June*, 19—, my house, insured in your company under policy number 55448976 was damaged (or destroyed) by fire. Proof of loss will be made and forwarded to you.

Dated, *June 3*, 19—.

John Smith

ASSURED

CHAPTER IX

Criminal Law

CRIMES are divided into felonies and misdemeanors, the former being the more serious offenses against the State. In turn, felonies and misdemeanors are usually divided into crimes against the person, such as murder, rape and assault; and those against property, such as burglary, robbery and fraud. Measured in terms of offenders, crimes against property far exceed crimes against the person, in the ratio, probably, of ten to one.

Altogether, more than three hundred and fifty thousand men, women and children are confined to penal and correctional institutions each year. But even this figure does not accurately reflect the appalling amount of crime we really have. Many criminals are never caught; many of those who are caught are never convicted; and of those convicted many are released on probation or given a suspended sentence.

Criminologists believe that only ten per cent of those committing major offenses are ever apprehended. Assuming that the same rate applies to petty crimes, this nation maintains an army of at least three million five hundred thousand criminals annually. Small wonder that our estimated yearly crime bill totals \$13,000,000,000, or nearly the amount appropriated to run the entire Federal government in 1940!

Without the restraining influence of a penal code, these figures would be even more shocking. Imagine what would happen if, overnight, the criminal law were abolished and men could commit crime without fear of punishment!

The maintenance of law and order, then, is of more than academic interest. Indeed, the very safety of our lives and the preservation of our property may depend, in the last analysis, upon the efficient enforcement of the penal code.

So grave is the stigma attached to anyone charged with crime that society has placed a number of safeguards around the accused. One of the most important is the legal presumption that every man is innocent until he is proved guilty. This means that the burden of establishing guilt is on the prosecuting attorney. To further protect the defendant, the State, in whose name the prosecution is carried on, must prove the guilt of the accused beyond a reasonable doubt. Where the evidence is conflicting and there is a reasonable doubt in the mind of the judge or jury, the defendant must be acquitted.

The rights of the accused and definitions of the various crimes are fully discussed in this chapter.

1. *Question:* What is a crime?

Answer: A crime is any act, or failure to act, punishable by law, either in the form of a fine and/or imprisonment.

2. *Q.* What is the chief difference between a criminal action and a civil one?

A. A criminal proceeding is always prosecuted by the State and tried in the Criminal Court. A crime, therefore, is a wrong against the community or State, and is punishable as such. The form of the action is State of _____ vs. John Doe. Upon conviction, the accused is given a fine and/or imprisonment. A person who has been robbed, for example, causes the arrest of the accused and becomes the prosecuting witness for the State against the accused or defendant. He, the prosecuting witness, requires no lawyer, for the State undertakes, on his behalf, to prosecute the criminal, acting through its prosecuting attorney.

A civil action, on the other hand, does not affect the community or State. It is an action of one individual against another. The usual form is John Doe, plaintiff, vs. John

Smith, defendant. It is a proceeding brought to redress an unlimited variety of wrongs committed by one person against another. It may be a damage suit to secure money for injuries resulting from an accident, or damages for a breach of contract. On the other hand, it may be suit in "replevin," to recover a specific thing wrongfully in the possession of another—as, for example, furniture, after failure to pay the money due on it. It may be a suit in ejectment where the plaintiff does not seek damages but merely seeks to oust a tenant who has failed to pay his rent. In all such cases, both the plaintiff and the defendant appear in court. Both parties require a lawyer to represent them, and it is usually good wisdom for the party having a legal paper served upon him to immediately consult his attorney so that he may be properly advised as to his rights and obligations. If, as a result of the proceedings, the plaintiff wins, he will usually obtain the particular end for which suit was brought. Should the defendant win, the case is dismissed unless, of course, the plaintiff takes an appeal.

3. Q. John walks on Jim's land wrongfully, but does not disturb the peace in doing so. Is this a crime or a civil injury?
A. A civil injury, since it does not affect the other members of the community as to require the State to punish John. John is merely liable in an action for damages.
4. Q. While strolling through the country, you spy a sign marked: "Stop. No Trespassing Under Penalty of the Law." Instead of stopping, you walk on the land. Have you committed a crime?
A. No, but you may be sued for damages.
5. Q. John, a grocer, cheats Mrs. Smith by giving a false weight to the sugar she buys. Is this a crime?
A. Yes. Here, the wrong affects the whole community to such an extent that the public welfare requires John be punished.
6. Q. What is treason?
A. Treason is the act of waging war against the United States, or giving its enemies aid or comfort. It is an offense committed usually during war and by a citizen of the country.

7. Q. What is a felony?
 - A. It is a serious crime such as murder, manslaughter, rape, sodomy, robbery, larceny, arson, burglary and such other crimes as are made felonies expressly by law.
8. Q. What is a misdemeanor?
 - A. A misdemeanor is a crime that is neither treason nor a felony. It is generally a less serious offense, such as disturbing the peace, drunkenness, disorderly conduct, conducting a house of ill fame, assault and battery, etc. The punishment is usually, but not always, less severe than in felonies.
9. Q. Why is it important to know the difference between a felony and a misdemeanor?
 - A. In felonies, there may be principals and accessories. In misdemeanors, all are principals and can be punished as such. Again, unintentionally causing death in committing some felony—robbery, for example—is murder, while to unintentionally cause death in committing a misdemeanor—assault and battery, for example—is manslaughter, a less serious crime. A warrant is unnecessary in making an arrest for a felony. It is usually necessary to authorize arrest for a misdemeanor. Moreover, in making an arrest for a felony, the accused may be killed if he cannot otherwise be taken. This is not true in the case of a misdemeanor.
10. Q. A publisher prints and circulates an obscene book, for which he is arrested by the postal authorities. In his defense, he pleads that his motives in publishing the book were good in that he desired to correct abuses in intercourse between the sexes. May he still be convicted of sending obscene matter through the mail, a Federal offense?
 - A. Yes. The law is unconcerned with motives in the commission of crimes, be they good or bad. The reason for this is simple: if a good motive or reason served as a defense, all a murderer would have to show to gain an acquittal would be that the victim was a bad character and that the world was better off for being rid of him. The law does not tolerate such a point of view.
11. Q. Andrew parks his car within fifteen feet of a fireplug, not knowing that parking within twenty feet is forbidden. At

the traffic court hearing, he pleads ignorance of the law. Is this a defense?

- A. No. Ignorance of the law excuses no one. Legally, each person is presumed to know the law. Otherwise, persons could escape the consequence of their acts by pleading or pretending such ignorance.
12. Q. A blind man sells obscene literature. In his defense he pleads that he did not know that the magazine he is selling is obscene. Is this a good defense?
- A. Yes. Here, the point is that the blind man might not actually know the magazine is obscene. Of course, if it could be shown by other testimony that he did know, then he would be found guilty. Ignorance of the law is not here involved; only ignorance of fact—in this case that the blind man did not and could not know what he was selling.
13. Q. John takes Henry's watch in the belief that it belongs to him. May John be found guilty of larceny?
- A. No. A reasonable and honest mistake of fact will excuse the defendant.
14. Q. Is a married woman responsible for the crimes she commits?
- A. Yes. She is criminally responsible for any offense committed of her own free will. She is not responsible, however, for crimes, other than treason or murder, committed under pressure of her husband.
15. Q. To what extent is a child responsible for his crimes?
- A. Under the age of seven a child cannot be convicted of any crime. Between the ages of seven and fourteen it is legally presumed that the child is incapable of committing a crime, but this presumption may be rebutted by the prosecuting attorney by showing that the child had sufficient intelligence and understanding to comprehend the nature of the criminal act.
- Children over fourteen are as much responsible for their criminal acts as adults. To escape responsibility, the child has the burden of satisfying the jury that he did not have sufficient intelligence to understand the nature and consequence of his act.

16. Q. To what extent are insane persons relieved of responsibility for their criminal acts?
- A. A man is not criminally responsible for an act if, by reason of mental infirmity, he is incapable of distinguishing between right and wrong with respect to the particular act. Some courts hold, moreover, that a man is not criminally responsible if he is driven to the act by an irresistible impulse, even though he knows such act to be wrong.
17. Q. A father believes that God has appeared before him, commanding him to kill his child as a sacrifice, which he does. Is the father guilty of murder?
- A. No. Here, he is acting under an insane delusion and would not be held responsible for the killing.
18. Q. To what extent is drunkenness an excuse for crime?
- A. Generally, it is no excuse.
19. Q. Herman plans to commit robbery and tells Joe about it. Joe informs the police who come to arrest Herman. Is such an arrest lawful?
- A. No. The mere intent to commit a crime, unaccompanied by the crime itself, is not punishable.
20. Q. John urges you to commit a crime, which you refuse to do. May John be punished criminally?
- A. Yes. Soliciting a person to commit a crime, even though the crime is not carried out, is punishable at law, on grounds of public policy. This is done to discourage the commission of crimes.
21. Q. A man seizes a woman with intent to rape, but voluntarily changes his mind and refrains from doing so. Of what crime, if any, is he guilty?
- A. Attempt to rape, a less serious offense than rape itself, though often punishable almost as severely. This problem is to be distinguished from the problem in Question 19 in that here the attempt has already been made and assault committed.
22. Q. Three men agree to commit a crime. Later, two of the men abandon the scheme, but the third commits the crime formerly agreed upon by all three. When the latter is

arrested, he reveals the identities of the other two men. They, in turn, plead that they had given up any idea of committing the crime and had not taken part in its commission. Can the two men be prosecuted?

A. Yes, for conspiracy. In a conspiracy it does not matter at all whether the act agreed upon is carried out or not. The crime is committed when two or more people *conspire to commit* an unlawful act. Of course, while technically they would be convicted of conspiracy, their punishment would be less severe than that of the criminal who actually commits the crime.

23. Q. While in a department store, Mrs. Smith is stopped by a store detective who accuses her of stealing a pair of hose. Despite her denials, and over her protests, he insists on taking her to his office in the store where he causes her to be searched. No stockings are found upon her person. In all, Mrs. Smith has been detained about ten minutes against her will, and is finally released with the apologies of the store detective. What can she do about this?

A. She may cause the arrest of the detective for false imprisonment and sue the department store for damages for causing the false imprisonment. The detective is the agent for the store; his unlawful acts, when performed within the scope of his authority, will bind his principal, the owner of the store. The crime consists in depriving a person of his freedom of movement, without legal authority and against his will. The place of imprisonment is unimportant. Arresting the wrong person under a warrant is also false imprisonment, as is an arrest by an officer without a warrant when a warrant is necessary. An arrest by an officer, where the officer has no authority, also constitutes the crime. When a person is falsely imprisoned, he may not only cause the arrest of the officer, but may also sue him for damages.

24. Q. What is a homicide?

A. It is the killing of one human being by another. It includes murder and manslaughter.

25. Q. What is murder?

A. Murder is the unlawful killing of a human being with malice aforethought, either express or implied.

26. Q. Upon the prolonged disappearance of John's wife, John is arrested for her murder. The body is never found or accounted for. May John be convicted?
- A. No. It is not enough to show merely that the body is missing; there must be direct proof of death.
27. Q. What is the difference between murder in the first degree and murder in the second degree?
- A. In most states, murder in the first degree is established upon proof that there is an actual intent to kill, with premeditation; or where the slaying is committed, though unintentionally, in the performance of such crimes as arson, rape, robbery or burglary. Thus, a burglar, surprised in the act of robbery, who shoots and kills, is guilty of murder in the first degree, even though the killing was done without premeditation. Murder in the first degree is generally punishable by death or life imprisonment. Murder in the second degree is usually the unlawful killing of a human being *without premeditation*, and is less serious than murder in the first degree.
28. Q. Mr. Brown kills his wife, having plotted to do so in order to collect on her insurance. Of what crime is he guilty?
- A. Murder in the first degree, since the killing is premeditated.
29. Q. Coming home unexpectedly, a husband finds his wife in the arms of another man. He shoots the stranger. Of what crime is he guilty?
- A. Probably second degree murder, for the slaying was committed in the heat of passion but without premeditation.
30. Q. John and his sweetheart agree to commit suicide. John kills his sweetheart but, losing his nerve, doesn't kill himself. What crime has John committed?
- A. Murder, probably in the first degree, since there is a legal presumption against suicide; in the absence of proof of such a fact, the law would presume both malice and premeditation. If a suicide note were produced, it probably would reduce the crime to murder in the second degree.
31. Q. What is the difference between murder and manslaughter?
- A. The chief distinction is that in murder, the killing is committed with premeditated malice, while in manslaughter the

killing is without malice or premeditation. Manslaughter is a less serious crime than either first or second degree murder.

32. Q. What is voluntary manslaughter?

A. This is an intentional killing, in sudden passion or heat of blood caused by a reasonable provocation, and without malice aforethought. To reduce a crime from murder to manslaughter, the killing must be without malice, even though intentional. The provocation must be so great as to reasonably excite passion in an ordinary man, causing him to act rashly and without reflection. There is sufficient provocation to reduce a crime to manslaughter when one kills after being assaulted violently or with great rudeness; when an unlawful attempt is made to arrest one; when the killing is in mutual combat, provided no unfair advantage is taken by the slayer, and the occasion was not sought for the purpose of killing; where a husband catches his wife in adultery and kills her or her lover. Of course, the same applies in the case of a wife who kills her husband or his mistress.

But provocation does not reduce murder to manslaughter if the passion has actually cooled by the time the blow is struck, or if there has been a reasonable time for cooling. Both these questions are facts to be weighed by the jury.

33. Q. What is criminal negligence?

A. It is acting in such a reckless and dangerous manner as to constitute an utter disregard for human life. A railroad engineer who operates and wrecks his train while drunk is guilty of such negligence.

34. Q. Jim, who is drunk, drives his car so recklessly that he runs it on the sidewalk, striking a pedestrian who shortly afterwards dies from his injuries. Of what crime is Jim guilty?

A. Manslaughter. Jim has acted so recklessly and with such wilful disregard for human life as to convict him of this crime. Since there was no premeditation or malice, the crime would not be murder. Ordinarily, the killing of a pedestrian by an automobilist is not even manslaughter—unless the State can prove that the driver was negligent.

35. Q. Jim, a farmer, carelessly permits his bull to roam loose, the animal attacking a stranger and killing him. Of what crime is Jim guilty?
- A. Manslaughter—since Jim's conduct in allowing a dangerous animal to roam at large indicates a reckless disregard for human life.
36. Q. As a lark, John calls out "Fire" in a crowded theater. Two people are killed and several injured because of the resulting panic. Will John be convicted of any crime?
- A. Yes, manslaughter, at the very least. There is a possibility that he might be convicted of murder in the second degree, since John displayed a reckless disregard for human life, the law assuming malice on his part.
37. Q. A woman goes to a drugstore, purchasing a drug with which to commit an abortion on herself. She dies as a result of the drug and the medicine is traced back to the druggist. What crime has he committed?
- A. Probably manslaughter, since he aided, though unwittingly, in bringing about her death. His crime would not be murder because of the absence of premeditation or malice.
38. Q. A midwife performs an abortion on Jane, resulting in Jane's death. With what crime can the midwife be charged?
- A. Manslaughter—for the same reason as above.
39. Q. John engages in a fist fight with Harry in which Harry is knocked to the ground, his head striking the pavement. Harry suffers a severe head injury and dies thirteen months later from the effects thereof. John is tried for manslaughter. Can he be convicted?
- A. No. To sustain a conviction, death must come within a year and a day after the blow is struck or other act done; otherwise, the law conclusively presumes that death resulted from some other cause.
40. Q. A son learns that his mother is living in adultery with another man. In a fit of passion he seeks out and kills him. Has he committed a crime?
- A. Yes, probably manslaughter.

41. Q. A burglar attempts to break into your house for the purpose of committing a theft. May you kill him to prevent his entry?
- A. Yes, such killing is justified to prevent the commission of a serious crime—in this case, burglary.
42. Q. Under what circumstances is a person justified in killing another in "self-defense"?
- A. To make a killing justifiable or excusable on the ground of self-defense, it must reasonably appear that there is immediate danger of death or of great bodily harm. The danger, however, need not necessarily be real but must be believed, on reasonable grounds, to be real. In a sudden assault or fight, for example, the party threatened must retreat as far as he can with safety before taking his opponent's life. Finally, the slayer, in order to be excused on the ground of self-defense, must not have provoked the difficulty nor have been the aggressor.
43. Q. While having a drink in a tavern, you are attacked by a drunk who, without provocation, slashes at you with a knife. You pick up a beer bottle and strike him over the head with it. The drunk falls to the ground, strikes his head against the bar rail, and dies. Can you be convicted of any crime?
- A. No. One attacked by a deadly weapon may assume that the intention is to kill and may kill in order to protect his own life.
44. Q. In the above example, suppose that the drunk merely strikes you in the face. Are you justified in killing him?
- A. No, but you may return blow for blow.
45. Q. While using an ax to chop wood, the head of the ax flies off, striking and killing a bystander. What crime has been committed?
- A. None. This is a case of "excusable" homicide, i.e., it involves the killing of another in the doing of a lawful act, without any intent to hurt and without criminal negligence. If, however, the owner knows that the head is loose and that it is likely to come off, he might be convicted of man-

slaughter, for he will then have revealed a reckless and criminal disregard for human life.

46. Q. Under what circumstances is one justified in taking another's life?

- A. 1. In the performance of a public duty; as, for example, a hangman executing a criminal in accordance with law.
2. When a peace officer or private person kills another to prevent the commission of a serious crime.
3. When a police officer attempts to arrest a criminal for a serious crime and the criminal tries to escape; or when the criminal attempts to escape after his arrest but while in custody.
4. When a person who, without fault, kills his attacker to save himself from death or great bodily harm.

47. Q. John is arrested for robbery and, eluding the policeman, makes an escape. The policeman draws his gun, killing John. Is the policeman guilty of any crime?

- A. No. An officer may kill to prevent an escape, if such extreme measures are necessary.

48. Q. Suppose John is arrested for fighting and attempts to escape. May the policeman kill to prevent the escape?

- A. No. Where one is arrested for a minor crime and does not assault the officer, the policeman may not kill but must let him escape.

49. Q. John comes home one evening to find his wife being raped. May he legally kill the ravisher?

- A. Yes. One is justified in killing to prevent the commission of a serious crime, in this case, rape.

50. Q. John comes home one afternoon to find his wife in bed with a stranger. The intercourse is voluntary. May John kill the stranger?

- A. No. Killing is not justified where the sexual act is free and voluntary. John would probably be convicted of manslaughter, not murder, since there is an absence of premeditation and malice, the crime being committed in a sudden heat of passion caused by understandable provocation.

51. Q. What is larceny?
A. This is the taking and carrying away of the personal goods of another of any value from any place with the criminal or fraudulent intent to steal the same.
52. Q. What is the difference between grand and petty larceny?
A. The difference is chiefly in the value of the article stolen. Many statutes provide that stolen articles under the value of \$10 or \$25 are to be considered petty larcenies and punished as misdemeanors. Articles above a stated value are considered more serious and are termed grand larcenies, punishable as felonies.
53. Q. A maid takes a pair of stockings from her employer without the latter's knowledge. What crime has she committed?
A. Larceny, since she unlawfully took goods belonging to another person.
54. Q. Tom drops a false coin into a vending machine and receives a package of cigarettes. What crime has he committed?
A. Larceny, since he unlawfully took goods belonging to another person.
55. Q. What is embezzlement?
A. This is the misappropriation of funds or goods that come into a person's hands lawfully. For example, Jim, a collector for an insurance company, collects money due the company; but, instead of turning it over to the company, he pockets it himself. Since the money came legally into Jim's hands, it is not larceny. When Jim failed to turn over the money to the company, he misappropriated it and hence committed the crime of embezzlement.
56. Q. How does embezzlement differ from larceny?
A. In embezzlement the original taking is lawful. In larceny it is not.
57. Q. What is the crime of obtaining money or property under false pretenses?
A. It is such a fraudulent representation of fact, by one knowing it to be false, as to induce a person to whom it is made to part with something of value. For example, Mrs. Jones

goes to a department store to buy a fur coat. She tells the salesperson to charge it to Mrs. Smith, saying that she is Mrs. Smith and signing the charge slip in that name. Mrs. Jones can be prosecuted for obtaining goods by false pretenses.

58. Q. A man obtains board and lodging at a hotel by falsely telling the proprietor that he expects a check at a certain time. Is he guilty of the crime of false pretenses?
- A. No. A statement as to future events, or a statement of intention or expectation, is not a false pretense. A mere promise, a mere expression of opinion or belief, or mere dealer's talk are other acts not considered false pretenses.
59. Q. On the strength of his promise to marry her, Mrs. Jones gives Tom \$1,000. Tom refuses to go through with his bargain and Mrs. Jones causes his arrest. Can he be convicted of obtaining money under false pretenses?
- A. No. Statements or promises as to future events are not sufficient to sustain a conviction. The false pretense must relate to an existing fact. Mrs. Jones can probably recover the money, however, in a civil suit.
60. Q. A customer asks a grocer for a pound of sugar. After receiving the bag, the customer protests that it seems to weigh less than a pound. The grocer insists that it is the full measure. When he arrives home, the customer weighs the sugar and discovers that it weighs less than a pound. Is the grocer guilty of any crime?
- A. No, not unless the bag was actually weighed out to the customer. If, however, by using a false weight, the grocer gives the customer less than the full measure, the grocer may be convicted of cheating. This is also true where the grocer places his hand on the scale to give false weight.
61. Q. John gives Bill a check for \$50. When Bill presents the check to the bank it is returned marked "insufficient funds." Has John committed a crime?
- A. No, not if John had any funds at all on deposit. Even if they were insufficient to cover the check, he could only be sued civilly, not criminally.

62. Q. Harry gives Bill a check for merchandise in the sum of \$50. The check is returned by the bank marked "no such account." Of what crime can Harry be convicted?
- A. Obtaining goods under false pretenses.
63. Q. Entering a restaurant, a man orders and eats a meal. At the time, he has no money to pay for it. Has he committed a crime?
- A. No. A person is not guilty of the crime of obtaining goods under false pretenses when there is only a failure to disclose facts—in this case, the lack of money. He can only be sued for the amount of the meal.
64. Q. What is robbery?
- A. Robbery is the taking and carrying away of the personal property of another, from his person or in his presence, by fear or violence. It is larceny plus *force*. When one man picks another's pocket, the crime is larceny. When he does so at the point of a gun, or by a threat to kill or otherwise perform serious bodily harm, the offense is robbery. Robbery is usually punished more severely than larceny.
65. Q. John robs a filling station of \$150. That same night, feeling repentant, he returns the money to the owner. Can he be convicted of robbery?
- A. Yes. A person committing a robbery cannot escape responsibility by repenting and abandoning or returning the property.
66. Q. A man knocks a purse out of a woman's hand, picks it up from the ground and runs off with it. Has he committed larceny or robbery?
- A. Larceny. To constitute robbery, sufficient force must be used to overcome resistance. If there is any injury to the owner, or if she resists the attempt to rob her and her resistance is overcome, there is sufficient violence to make the taking robbery.
67. Q. What is the crime of receiving stolen property?
- A. This is the receiving of goods when knowing or believing them to be stolen.
68. Q. A pawnbroker is offered a quantity of jewelry by a shabbily-dressed stranger for a ridiculously low price. The pawn-

broker buys the jewels. Later, they turn out to have been stolen. May the pawnbroker be prosecuted for receiving stolen goods?

- A. Yes. The law assumes that, at the time the jewels were bought, the pawnbroker should have known they were stolen. This is so because of the great difference between the value of the articles and the price paid for them; also, the unlikelihood of the person selling them being the lawful owner.

69. Q. What is forgery?

- A. Forgery is the false writing, or alteration of writing, with the intent to defraud. Paintings, documents, checks, etc., may be the subject matter of this crime.

70. Q. John raises the amount of a check from \$5 to \$500 by altering the figures on the check. What crime has he committed?

- A. Forgery.

71. Q. What is burglary?

- A. Burglary is the breaking and entering of the dwelling house of another, at night, with intent to commit a serious crime. However, many states, by special law, have broadened burglary to include shops, stores, warehouses, etc., and have included burglary as being the breaking and entering in the daytime as well as the night.

72. Q. Bill forces open a locked window of a house at night. He enters and takes away with him a quantity of money. Of what crime is he guilty?

- A. Burglary.

73. Q. John, the owner of a house, locks it up and leaves it, without intending to return. In his absence, the house is broken into and a quantity of goods are wrongfully removed. Has burglary been committed?

- A. No. When John left the house without intending to return, the house lost its character as a dwelling house. If he had only left temporarily, with the intention of returning, even though he remained away for some time, the house was a dwelling and a breaking and entry would be burglary. In this example, the crime committed was larceny, a less serious crime than burglary.

74. Q. A man sees the door of a house open, walks in and steals a quantity of goods. Has a burglary been committed?
- A. No. In going through the open door no legal "breaking" has taken place. The crime committed is larceny. However, there need not be an actual breaking to constitute burglary. If a person gets into a house by some trick or fraud, with intent to commit a crime, there is a legal breaking and he is guilty of burglary.
75. Q. Suppose a window, being partly open, is pushed further open in order to make an entry. Is this burglary?
- A. No, it is larceny. No "breaking" has taken place.
76. Q. What is arson?
- A. Arson is the wilful and malicious burning of the dwelling house of another. By state law, the offense has been broadened to include the burning of other buildings such as shops, warehouses, unoccupied houses, etc., and sometimes the burning of one's own house.
77. Q. In a political campaign, one of the candidates writes and circulates a pamphlet attacking his opponent as being "nothing but a cheap crook" who should be in jail rather than running for office. As a matter of fact, there is no truth to the charge. Is the writer guilty of any crime?
- A. Yes, criminal libel, which is any published writing exposing a person to ridicule, hatred or contempt.
78. Q. Suppose, in the above example, the charges were true. Would he still be guilty of criminal libel?
- A. No, not if it appeared that the written attack was made in the public interest and for the public good.
79. Q. While on the witness stand and under oath, John testifies that he saw a certain automobile accident. Later, it is brought out by clear and convincing evidence that John was far from the scene when the accident occurred. Is John guilty of any crime?
- A. Yes. Perjury. To be convicted of this crime, the perjurer must testify, under oath, to a fact which he knows or believes to be false. The false testimony, moreover, must be important to the issue or dispute.

80. *Q.* Is perjury committed only in court?
A. No. Perjury may be committed in making a false oath in procuring a marriage license, in naturalization proceedings, in an affidavit where one is required, etc.
81. *Q.* A lawyer instructs his client to take the witness stand and swear falsely to some important fact. What crimes have been committed?
A. The client is guilty of perjury and the attorney of "subornation of perjury"—which is persuading another to testify falsely under oath.
82. *Q.* Bill, a bank teller, embezzles \$5,000 from the bank where he is employed. The president of the bank informs Bill that if he returns the bulk of the money stolen, he will see that Bill is not prosecuted. Is such an agreement legal?
A. No. The president of the bank may be found guilty of "compounding" a crime; he may be sentenced to prison, since it is unlawful for one person, for any valuable consideration, to enter into an agreement not to prosecute another for a crime.
83. *Q.* What is bigamy?
A. This crime is committed when a person, already legally married, marries another person during the life of his or her wife or husband. Many states, by law, allow remarriages where the husband or wife has been continually absent for a specified period, usually seven years.
84. *Q.* May a man be found guilty of raping a prostitute?
A. Yes. The fact, however, that a woman is a prostitute, or is even promiscuous, is always considered by the court in determining the question of consent, the court taking the view, usually, that such a woman is more likely to consent than either a virgin or anyone previously enjoying a good reputation.
85. *Q.* James takes Alice out for an automobile ride. He gets her intoxicated. While she is in that condition, he has sexual intercourse with her. Is he guilty of any crime?
A. Yes, rape. A really drunken woman cannot consent to intercourse. Upon recovering her senses, she may have the man charged with the crime.

86. Q. Charles persuades Janet, a virgin, to have sexual intercourse with him, promising to marry her if she does. Relying on this promise, Janet agrees. Charles later changes his mind and refuses to go through with the marriage ceremony. What may Janet do about it?

A. She may have Charles prosecuted for the crime of seduction. If, however, at any time before the trial Charles agrees to marry her, there can be no prosecution and the case will be dropped. It is not considered one of the more serious offenses.

87. Q. What is habeas corpus?

A. This is a writ issued by a court to determine whether a person detained in custody is being held legally. It is frequently used to secure a hearing where one is detained or incarcerated as a lunatic, criminal or juvenile delinquent. The function of the writ is to inquire whether the detention itself is legal. If the imprisonment is illegal, the court will discharge the prisoner. The application for the writ of habeas corpus is usually made by the prisoner's lawyer.

88. Q. A husband has his wife committed to an insane asylum when, in fact, she is quite rational, hoping thereby to obtain control of her property. How may her release be secured?

A. By applying for a writ of habeas corpus. At the hearing, the court will determine whether or not she is actually insane.

89. Q. Without having been served with a warrant, John is arrested and convicted of a crime. It turns out later that John's arrest was unlawful in that a warrant was necessary for his arrest. How may this point be brought up, after John's conviction and imprisonment?

A. By a writ of habeas corpus.

90. Q. John, a married man, is inducted into the armed service of the United States. While in the army, John accuses the Selective Service Board of having drafted him before it had exhausted the supply of single men. How may he test the validity of his induction?

A. By having his lawyer apply for a writ of habeas corpus.

91. Q. Mrs. Brown's servant, Alice, lets her boy friend into her employer's home for the purpose of robbing it. Alice is

away while the house is being robbed. Is she guilty of any crime?

- A. Yes. She is guilty of being an accessory before the fact, this being one who aids or brings about the commission of a serious crime, although absent when the crime is actually committed. Had Alice been present, she too would have been guilty of robbery.

92. Q. John urges George to kill Bill by shooting him. Instead, George kills Bill by stabbing him. Of what crime, if any, is John guilty?

- A. John is guilty of being an accessory before the fact to murder, just as he would have been if George had followed John's instruction to shoot Bill.

93. Q. Is an accessory before the fact punished as severely as the actual criminal?

- A. Yes, usually.

94. Q. Tom, having committed a burglary, is sought by the police. He seeks refuge with Harry who, after hearing about the crime, gives Tom food and shelter for the night. The next morning, the police break in and arrest both Tom and Harry. Of what crime is Harry guilty?

- A. Harry is guilty of being an accessory after the fact, this being one who, knowing a serious crime to have been committed by another, receives or otherwise aids him in order to help him escape punishment.

95. Q. In the above question, assume that Harry did not know Tom had committed a serious crime. Would he still be guilty of being an accessory after the fact?

- A. No. The person giving aid must know that a serious crime has been perpetrated.

96. Q. Jack rushes into Mabel's apartment, confessing that the police are after him for robbery. He tells her he needs money with which to make a getaway. Mabel gives him \$50. Jack leaves. Shortly afterwards, the police arrive and, after questioning, Mabel admits that she gave Jack some money in order to get rid of him. Technically, what crime has Mabel committed?

- A. Unless she insists that she did not know Jack had committed robbery, Mabel would be found guilty of being an accessory after the fact.
97. Q. Is an accessory after the fact punished as severely as the actual criminal?
- A. The punishment is less severe, usually.
98. Q. May only police officers make arrests?
- A. No. Any person may arrest another, without a warrant, when he sees a serious crime committed or where a dangerous wound is inflicted in his presence. Anyone may arrest and restrain those involved in fights or brawls. Anyone may arrest another whom he reasonably suspects to have committed a serious crime, actually committed.
99. Q. A riot takes place in a defense plant. Is John, a mere spectator, under any obligation to help suppress it?
- A. Yes. When requested he must aid police officers to suppress the riot. This applies even to fights between two or more persons.
100. Q. Under what circumstances may policemen make an arrest without a warrant?
- A. Without a warrant they may arrest persons committing any crime in their presence, as well as those whom they reasonably suspect to have committed a serious crime. In brawls, officers may not only arrest and bring the offenders before a magistrate, but may, upon their own authority, imprison them for a reasonable time.
101. Q. You are arrested for having stolen an automobile and are placed in jail pending your trial. How may you secure your release before trial?
- A. By getting someone to go your bail—meaning that a responsible person, or a professional bondsman, puts up property before the court or magistrate as a guaranty that you will appear at the place of trial to answer the charge against you.
102. Q. May bail be offered in all cases?
- A. Yes, except in cases where the penalty may be death; as, for example, murder, rape, treason and, in some states, arson.

103. Q. What happens if the accused, released temporarily on bail, fails to show up for the trial?
A. The bondsman loses his money. Moreover, the accused may be rearrested—with the likelihood that, upon conviction, his punishment will be much more severe.
104. Q. May a witness to a crime be jailed pending trial of the accused?
A. Yes. State witnesses may be required to furnish bond for their appearance and, if they cannot do so, may be committed to jail until the actual trial is held.
105. Q. John is in jail, charged with the commission of a serious crime. While asleep, he utters words confessing his guilt; the words are taken down by the jailer. May this "confession" be introduced at the trial?
A. No. Words spoken in sleep or during the delirium of illness are not admissible.
106. Q. Henry threatens to "knock Jack's block off," but actually does nothing. Is Henry guilty of any crime?
A. No, not unless the threat carries with it a reasonable fear that it will be executed. If Jack is under such fear, Henry may be arrested for assault.
107. Q. Suppose Henry actually does strike Jack. What crime has he then committed?
A. Assault and battery.
108. Q. Tom angrily spits at Bill. May Tom be arrested?
A. Yes, for the crime of assault and battery. It is also a crime to push another angrily out of the way.
109. Q. A younger person tells an older man that "if you were not an old man I would knock you down." Has the younger man committed a crime?
A. No, since the words indicate that no injury will be inflicted.
110. Q. A school teacher slaps an unruly child. Is the teacher guilty of any offense?
A. No, not if the punishment is moderate.
111. Q. Joan is placed by the court in the custody of her mother. The father, without the mother's consent or permission, takes Joan on a trip. Is the father guilty of any crime?
A. Yes, kidnapping.

112. Q. Susan runs away from her father's home, seeking refuge in the home of a friend in another city. Is the friend guilty of any crime for harboring her?

A. No.

113. Q. Alice's boy friend persuades her to leave home without the consent of her parents and to run away with him. Alice is under age. Is her boy friend guilty of any offense?

A. Yes, the crime of abduction, a less serious crime than kidnapping.

FORM 19

APPLICATION FOR REQUISITION OF A FUGITIVE FROM JUSTICE

To the Governor of the state of *Maryland*:

You are respectfully requested to issue a requisition to the Governor of the state of *New York*, for the apprehension, rendition and delivery to the state of *New York*, of one *John Doe*, who stands charged by an affidavit in the *Court of General Sessions*, with the crime of obtaining money under false pretenses and by false writing, committed in *New York City*, state of *New York*, but who has, since the commission of said offense, and before an arrest could be made upon process issued by said court, and with a view of avoiding arrest, fled from the justice of the state of *New York*, and into the state of *Maryland*, where I believe he now may be found.

That said *John Doe* is now in the city of *Baltimore*, in the state of *Maryland*, as I am informed and believe, I having been so informed by the sheriff of said city of *Baltimore*, that said *John Doe* fled from this city of *New York* and the state of *New York* some time during the month of *June*, 19—, the exact time of his said flight being to me unknown, he having disappeared about the time I discovered the false pretense and the falsity and invalidity of the writing by which he obtained such money, as alleged and set out in the annexed affidavit.

In my opinion, the ends of justice require that he be brought back to this state for trial. The facts stated in the affidavit in said cause entitled *State of New York v. John Doe*, the same being cause No. 52134 on the records of the *Court of General Sessions*, are true, and I believe that sufficient evidence will be produced in the prosecution of said *John Doe* to secure his conviction of the crime charged.

I herewith present a duly certified copy of the original affidavit charging said crime, now on file in the office of the clerk of the court. I nominate

Dated at *New York City*, this *1* day of *August*, 19—.

I, Robert Brown, being duly sworn, on my oath say that the facts stated in the foregoing application are true.

NOTARY PUBLIC

My commission expires 10th day of September, 19—.

SEARCH WARRANT

Whereas complaint has been made before the subscribed, a justice of the peace for said City, upon oath of *John Doe*, that the following goods and chattels of him, said *John Doe*, namely 1 19— *Buick sedan, maroon, Md. license—53-325* were, on the 10th day of *June*, 19—, feloniously stolen, taken and carried away, at the City aforesaid, and that he has just and reasonable cause to suspect and believe and does suspect and believe, that said goods and chattels, or a part thereof, are concealed in *garage at 3000 Denison St.* in said City: You are, therefore, commanded forthwith to make diligent search in said described place for said goods and chattels, and if the same or any part thereof be found, to secure them and bring the person or persons in whose custody they are found before me or some other justice of the peace for said County, to be dealt with according to law; and have you there this writ.

JUSTICE OF THE PEACE

FORM 21

WARRANT TO KEEP THE PEACE

State of *Maryland*, City of *Baltimore*:

To any Sheriff of said City:

Whereas complaint has been made before the subscriber, a justice of the peace for said City, upon oath of *John Doe*, that he is afraid that *Richard Roe* will do him bodily hurt, and he hath prayed surety of the peace against said *Richard Roe*; you are, therefore, commanded forthwith to apprehend said *Richard Roe*, and bring him before the subscriber, or some other justice of the peace for said City, to find surety for his personal appearance at the next term of the *Criminal Court* for said City and for his keeping the peace meantime and more especially towards *John Doe*; and have you there this writ.

Dated, the 1 day of *June*, 19—.

JUSTICE OF THE PEACE

FORM 22

PETITION FOR WRIT OF HABEAS CORPUS

To the *Judge of the Baltimore City Court*:

The petition of *John Doe* respectfully shows that he was illegally restrained of his liberty by *Warden of the Baltimore City Jail*. Your petitioner, therefore, prays that the writ of habeas corpus issue, commanding said *Warden* to produce before this Honorable Court, the body of your petitioner, to abide such direction as may be given in the premises.

PETITIONER

FORM 23

WRIT OF HABEAS CORPUS

State of *Maryland*:

To *Warden, Baltimore City Jail*:

You are commanded to have the body of *John Doe*, detained under your custody, as it is said, together with the cause of his detention, by whatsoever name he be called, before the *Baltimore City Court*, immediately after receipt of this writ to submit to and receive what shall be considered and determined in that behalf; and have you there this writ.

Issued this 11 day of *June*, 19—.

(Seal of Court)

CLERK

CHAPTER X

Landlord and Tenant

THE LAW of landlord and tenant is another extension of the principles of contract and is governed, more or less, by the same rules. Just as an employment contract, for example, contains the terms agreed upon by the employer and employee, so the lease embodies the terms agreed to by the landlord and tenant, the breach of which may give rise to a suit for damages.

A contract, it will be recalled, must have a lawful consideration and a definite subject matter. In the landlord-tenant relationship, the consideration is the rent paid by one party to the other, the subject matter being the rented, or "demised," premises. A lease itself is the grant of a right to the exclusive possession of land for a definite term less than that which the grantor has in the land. An example of this is where one, owning a piece of property absolutely, or, as it is technically called, in "fee simple," leases it to another for a shorter term—for instance, ten years.

This chapter deals not only with leases, but with the respective rights, duties and obligations of the landlord and tenant.

1. *Question:* Who are the parties to a lease?

Answer: The lessor and lessee, the former being the one renting the premises, the latter the one to whom the premises are rented.

2. *Q.* In writing or drawing a lease, where a lawyer is not available, what points should be included?

- A. A lease should contain the names and addresses of the parties; the consideration, price or rent of the premises to be leased, a description of the premises to be leased, with whatever exceptions and reservations agreed by the parties, the terms and period for which the property is to be leased, the purpose for which the property is to be leased and, lastly, a clause providing for the landlord's re-entry on non-payment of rent or other non-performance of covenants on the part of the tenant, and, of course, the signature of the parties to the lease.
3. Q. Is a lease made on Sunday binding?
A. No.
4. Q. You give a deposit on an apartment or house and later change your mind about it, demanding the return of your deposit from the owner. Must he return it to you?
A. No.
5. Q. You sign a lease for one year for an apartment and, as evidence of your good faith, give a deposit. Under the terms of the lease, you are not to move in until three weeks after the signing thereof. A few days after the lease is signed, you ask the landlord to return your deposit because you have decided the apartment is not adequate for your needs. Is the landlord under obligation to return your deposit?
A. No. The landlord not only need not return your deposit—he can also sue you for breach of contract of the entire lease, holding you liable for the year's rent.
6. Q. When is rent due?
A. Rent is usually due in advance.
7. Q. If rent falls due on a Sunday, must it be paid that day?
A. No. It may be paid the next business day. However, if it falls due on any other holiday it must be paid that day.
8. Q. If a lease begins on the second day of January, rent commencing from that day, when is the next rent due, assuming it is payable monthly?
A. February 1st.

9. Q. Where a lease provides that rent is to be payable "either quarterly or monthly," who determines when it shall be paid?
- A. The landlord.
10. Q. A tenant, by a written lease, agrees to pay \$60 per month for the use of the rented premises. Later, he persuades the landlord to reduce the rent to \$50 monthly. After taking the reduced rental for several months, the landlord changes his mind and now tells the tenant that the rent is again \$60 per month. May the tenant refuse to pay the original rent?
- A. No. There is no legal consideration for the reduced rental.
11. Q. A tenant requests his landlord to reduce the rent because of the inconvenience and expense suffered by him during the making of repairs. The landlord agrees. Later, the landlord changes his mind. May the tenant continue to pay the reduced rent?
- A. Yes. There is now a legal consideration for the reduction, binding on the landlord.
12. Q. Can a tenant refuse to pay rent where the plumbing and drainage are defective, although no provision in the lease is made therefor?
- A. No. Nor may a tenant refuse to pay rent if the house is infected or unhealthful.
13. Q. Though the lease provides for it, the landlord consistently fails to supply adequate heat. Does this justify a refusal to pay rent?
- A. Yes. The same applies to the landlord's failure to comply with his agreement to furnish water or light. The tenant may also sue for breach of contract. Of course, notice should be given the landlord in order to provide him an opportunity to make good the alleged defects.
14. Q. John's house, which he has rented from Bill, is temporarily made unsuitable for occupancy, due to the making of repairs by the landlord. May John refuse to pay rent until such time as the house is once again habitable?
- A. No. If, however, the landlord fails to exercise diligence in carrying repairs through to completion, thus depriving the

tenant of the use of the premises, he may be entitled to suspend payment of rent.

15. Q. Not long after you rent a house, a bowling alley is erected adjacent to it. The noise from the bowling alley prevents you from sleeping at night. May you break your lease and avoid payment of rent due under it?

A. Yes. With the rental of premises there is an implied covenant that the tenant will have "the quiet enjoyment" of these premises, meaning simply that he will not be disturbed in his use of the property. When, as in the above case, something occurs which disturbs the tenant's "quiet enjoyment," he may vacate the premises and file suit for breach of his lease.

16. Q. You rent a store, signing a lease for a year, with an option to renew. At the end of six months, prior to the expiration of the lease, you find that the business you do does not warrant your staying and you move from the store. What rent will you be liable for?

A. You will be liable for the remaining six months on the lease. If the owner succeeds in re-renting the store, your obligation will be reduced proportionately. If the lease you signed is for five years and you stay for only six months, you will be liable for four-and-a-half years' rent.

17. Q. Bill leases a drugstore. It is provided that the landlord shall give his written consent when Bill applies for a liquor license. After Bill takes over the store, the landlord changes his mind and wilfully refuses to give his consent. May Bill refuse to pay his rent?

A. Yes, if he abandons the premises. Bill could then file suit against the landlord for breach of contract.

18. Q. You rent a store for a period of one year, rent to be paid in twelve equal monthly installments. As required by your lease, you give the landlord written notice of your intention not to renew the lease. Instead of moving the day your lease expires, you continue to stay on for another week or so. What can the landlord do?

A. He can continue to treat you as a tenant "holding over," compelling you to continue payment of rent for an addi-

tional year. Or he can sue you as a trespasser—that is, as one wrongfully in possession of his property.

19. *Q.* A tenant in an apartment house is unable to pay his rent. May the landlord seize a piano in the tenant's apartment, sell it and, from the proceeds, take out the rent due?
- A.* Yes. Many, if not all, states have laws which provide, in substance, that a landlord may take goods and chattels on the rented premises. Other laws provide, however, that certain articles shall be exempt from such "distress."
20. *Q.* Suppose, in the above case, the piano was subject to a mortgage. Could the landlord still take it?
- A.* Yes, providing the landlord satisfies the mortgage—that is, pays off the debt due on it.
21. *Q.* A tenant, without the landlord's knowledge, uses the leased premises for an illegal purpose, such as gambling or as a house of prostitution. When the landlord discovers the illegal purpose what can he do?
- A.* A number of states, by law, provide that, in such cases, the lease shall be void and the landlord may recover possession, even where the tenant has paid the rent in advance. In the absence of a state law, however, the landlord has no right to terminate the lease. He may sue merely for its breach or obtain an injunction prohibiting such illegal use.
22. *Q.* A landlord leases a house to a tenant who, with the knowledge of the landlord, uses it as a house of prostitution. The tenant refuses to pay rent and the landlord files suit to recover rent for the premises. May he?
- A.* No. Where the lease is made with the intention that the premises shall be used for an illegal purpose, the landlord cannot recover rent.
23. *Q.* Does your landlord have a right to enter your apartment without your permission?
- A.* Yes. He may enter to demand payment of rent, where due, to prevent waste, to do anything to save himself from liability for negligence in connection with the premises. For example, an owner may, without the consent of his tenant, tear down walls where the building has become unfit and unsafe by reason of fire or other defect.

24. Q. Suppose a landlord, without either authority or permission, forces himself into the tenant's premises. What can be done?
- A. For an unauthorized entry a landlord may be sued for damages. The unauthorized entry is called a trespass.
25. Q. How much heat is a landlord required to furnish in an apartment?
- A. Generally, an amount which will make the temperature of the rooms reasonably comfortable for the average person during the time the premises are usually occupied.
26. Q. After being in your rented house for a few months, the heating system becomes defective and is unable to furnish 60° Fahrenheit. The lease provides that the landlord shall furnish the heat. You have sublet a few rooms in your house but, because of the defective heating system, your tenants move out. What damages may you recover?
- A. You may recover the expenses to which you have been put as a result of having to leave the house, and also the loss of rental of rooms which you sublet.
27. Q. In his lease, a landlord agrees to provide the premises with sufficient heat. As a result of his negligent failure to do so, the tenant contracts tuberculosis. May he hold the landlord liable?
- A. Yes, if it can be proved that such neglect is the proximate cause of the tuberculosis, or made an already existing tubercular condition worse.
28. Q. You rent a barber shop. After being in possession for a few months, the landlord fails to provide hot water for use in your business. What can you do?
- A. You may cancel the lease and file suit for damages. What you will get by way of damages will be the difference between the rent agreed on in the lease and the rent the barber shop would bring without hot water. The damages, of course, would include only the period for which you were deprived of hot water.
29. Q. In renting an apartment the landlord assures you that the rooms are "clean." A few days after you move in, you discover that the apartment is overridden with bugs. You seek to cancel the lease. May you do so?

- A. No. A statement that an apartment or house is "clean" means only that it has been swept and scoured after the last tenant moved out. It is not a guaranty that the place is free of bugs or mice.
30. Q. You rent a house and, shortly after moving in, you notice that it is infested with rats to such an extent as to make the house unlivable. Can you cancel the lease?
- A. Yes, providing you have not created the condition and have made every effort to destroy the rats.
31. Q. You rent an apartment or house, the lease being silent on the question as to who is to make repairs. A few months after you have been living in the apartment or house, the plumbing goes out of control. You ask the landlord to make the necessary repairs. He refuses. Is he right in refusing?
- A. Yes. In the absence of an express agreement, the landlord is not bound to make ordinary repairs—nor is he bound to pay for such repairs made by the tenant.
32. Q. Suppose, in the above example, there is no lease; the apartment or house is rented on a monthly basis. Would the same rule hold true as to the tenant's liability for repairs?
- A. Yes.
33. Q. The sidewalk in front of your house is defective. Must you or the landlord make the repairs?
- A. You, in the absence of an express agreement to the contrary.
34. Q. You rent a five-room apartment from John and, in turn, you sublet one of your rooms to Jack. The window in Jack's room becomes broken. Who must replace the window?
- A. Jack, since he is the sub-tenant and you the tenant—unless an express agreement had been made by you to assume the obligation.
35. Q. A lease provides that the landlord agrees to keep the house in good repair. The tenant, at his own expense, hires a caretaker to keep the walks clean, rake, mow and seed the grounds. May he recover such expenses from the landlord?
- A. No. Such work does not constitute repairs.
36. Q. In a lease, a tenant agrees to keep the plumbing and heating plant in good repair. A few weeks after he takes over

the property, the tenant discovers that the heating plant was defective when he rented the property. May he compel the landlord to make the necessary repairs?

A. No, unless the landlord practiced some fraud or deception on the tenant by concealing the defect.

37. Q. A tenant leases a motion picture house, agreeing in the lease to keep the theater in good repair. The theater, through no fault of the tenant's, is totally destroyed by fire. Who must rebuild, the tenant or landlord?

A. The tenant. Keeping premises in repair has often been held to mean restoring the property after a fire.

38. Q. A tenant leases a retail clothing store, the lease providing that the landlord is to make all necessary repairs. Shortly afterward, the plate-glass front is broken by burglars. The landlord refuses to make repairs. What can the tenant do?

A. He can replace the front at his own expense and sue the landlord for reimbursement.

39. Q. A lease by which you have rented a building provides that the landlord is to make the repairs. After a severe rain, the basement of your building is flooded; you call in a crew to clean out the mud and water, paying them out of your own pocket. You later notify the landlord that you wish to be reimbursed for the money you paid out, advising him that, under the lease, he is required to make the repairs. Upon the landlord's refusal to return you the money, you file suit. Can you recover?

A. No. In order to recover, you must first give the landlord notice of the flood and provide him with an opportunity to do the necessary repairs. Failure to give him such notice and opportunity relieves the landlord of liability, even when the lease provides that the landlord shall make the repairs.

40. Q. Though the lease does not mention the party who is to make the repairs, the landlord agrees to repair the tenant's roof. In doing the work, however, the tenant's property is damaged by rain falling through openings negligently left by the landlord while doing the work. Is the landlord liable?

A. Yes. Although a landlord is not under any obligation to

make repairs, if he does undertake to make them, he is liable for any injuries which may result to the tenant from the negligent manner in which the work is done.

41. Q. Suppose, in the above example, the landlord had employed a workman to do the work instead of doing it himself. Would the landlord still be liable?

A. Yes, on the theory that the landlord controls or directs the work. The landlord, in turn, may recover against the one doing the work.

42. Q. An office building is heated by the landlord's engines. As a result of the latter's negligence, the heating apparatus explodes, causing considerable damage to your office. Is the landlord liable?

A. Yes. A landlord is liable for injuries to the tenant, as he is to any other person rightfully on the premises, caused by the former's neglect to remedy defects in, or by his improper management of, appliances of which he retains control. Landlords have been held liable for injuries caused by leakage of water pipes or other plumbing attachments in their control, elevators carrying freight or passengers, dumb waiters and machinery transmitting power, etc.

43. Q. A tenant who has leased a warehouse places therein a reasonable weight of goods, not suspecting that the floor structure cannot bear this weight. The floor gives way and the landlord seeks to hold the tenant liable. Can he?

A. No. The tenant would be liable for injuries caused by placing an unreasonable and extraordinary weight in the building. In this case, the weight was reasonably related to the structure of the floor; the tenant, therefore, would be absolved of responsibility.

44. Q. A state law provides that a landlord shall maintain lights in the hallway of all apartment houses occupied by two or more families. As a result of the failure of the landlord to provide such lights, a tenant stumbles down the stairs and breaks a leg. Is the landlord liable for damages?

A. Yes. The tenant is under no obligation to install bulbs or lights in hallways. For any injuries sustained by him or his family, or persons coming upon the premises for business

with or at the invitation of the tenant, the landlord would be held responsible.

45. Q. You rent an apartment, the lease being silent concerning who shall make repairs. Your mother-in-law, while visiting you for the first time, stumbles and falls as a result of a broken step. Can the landlord be held responsible?
- A. No. A landlord who, without agreeing to repair, and without knowledge of hidden defects, is not liable for personal injuries sustained on the rented premises—unless the premises contained some defect known to the landlord at the time of the rental and not disclosed to or discovered by the tenant.
46. Q. Suppose, in the above example, the landlord agrees to repair the defective step after it is called to his attention and that, as a result of his negligent failure to so repair, the mother-in-law stumbles and falls. Is the landlord then liable?
- A. Yes.
47. Q. You are living in a rented house. A stranger, walking by, slips and falls on the ice you have neglected to remove. Who is liable, the owner of the property or you?
- A. You, unless there is an express agreement to the contrary.
48. Q. A landlord rents an apartment with knowledge that the timbers in a floor are defective. A few weeks later, a member of your family falls through the rotted floor, sustaining injuries. Is the landlord responsible?
- A. Yes. The rule is that if there is some hidden defect which is known to the landlord at the time the lease is made, but which is not apparent to the prospective tenant, the landlord is bound to inform the tenant. Failing to do so, he is liable for injuries sustained by the tenant or his family.
49. Q. Thompson leases a floor of a building to Jones for warehouse purposes, knowing it to be too weak to be safely used for such purposes. The floor collapses, causing personal injuries to the tenant below and damage to his goods. Is Thompson or Jones liable in damages to the tenant?
- A. Thompson, the landlord. One renting premises to be used for a particular purpose, having reason to believe that this

use of the premises is likely to injure a stranger, is liable to such person.

50. Q. A market company leases you a meat stall, reserving control over the passageway. A customer stumbles over a defective plank in the passageway, sustaining personal injuries. Who is liable in damages, the market company or you?
A. The market company, since it reserved control of the passageway.
51. Q. Your lease provides that, at its expiration, you are to return the apartment to the landlord in as good a condition as when you received it, natural wear and tear excepted. When you vacate the apartment you remove some of the fixtures and leave some of the windows broken. What can the landlord do?
A. He can sue you for breach of the lease and collect damages.
52. Q. A lease provides that the tenant is to make all repairs. The store leased is destroyed by fire. To what extent is the tenant obligated?
A. He is usually bound to rebuild the store. He will also be bound to rebuild where the premises are destroyed by lightning, flood or tornado. As a precaution, the tenant should always insert in a lease a clause relieving him from liability in such cases.
53. Q. In the absence of a contract to that effect, is the tenant under any obligation to insure the buildings and other improvements on the premises for the benefit of the landlord?
A. No, but it is generally a good idea to do so, since, in case of destruction of the premises, the tenant would be held liable.
54. Q. A lease provides that the tenant shall insure the buildings for the landlord's benefit. He takes out one policy for a year, but does not renew. A fire occurs after the expiration of the policy. Is the tenant liable?
A. Yes. He must keep the premises insured for the entire tenancy.
55. Q. In his lease, a tenant agrees to insure the buildings on the premises and, in case of loss, to apply the proceeds of the

insurance to the restoration of the buildings. After the fire he assigns his lease to a third party. Must the third party apply the proceeds of the insurance to the restoration of the building?

A. Yes.

56. Q. You lease premises, known as the Jones Building, and now wish to change the name to the Smith Building. May you do so without the consent of the landlord where there is no provision in the lease?

A. Yes.

57. Q. In the absence of a provision in the lease to the contrary, may a tenant sublease the premises without the consent of the landlord?

A. Yes. Most written leases, however, contain a clause prohibiting subletting, except by and with the consent of the owner.

58. Q. After you lease a store, you desire to cover the outside walls with signs advertising your business. Your landlord objects. The lease itself is silent about such signs. May you use the outside walls?

A. Yes. A tenant is entitled to use the outside walls, unless there is an express agreement to the contrary. Of course he cannot use the walls so as to injure the property, or for purposes inconsistent with the reasonable enjoyment of the property.

59. Q. In the absence of an express agreement, may a tenant alter the premises without obtaining the consent of the landlord?

A. A tenant generally has no right to make material or permanent alterations in the rented premises. Where, however, a tenant has a long lease, he usually has the right to make such changes as the business established requires, provided the value of the building is not impaired.

60. Q. A tenant leases a house and land, planting a number of trees, bushes and shrubs. At the expiration of his tenancy, he seeks to remove that which he has himself planted. May he?

A. Yes. If planted by the tenant he may remove them.

61. Q. What are the obligations of a tenant who rents farming land?

A. He must use the land as such, see that no waste is permitted, that the land is farmed in a husbandlike manner, that the soil is not unnecessarily exhausted by negligent or improper tillage and that repairs are made.

62. Q. You rent a stock farm from Jones. Who is entitled to the natural increase of the stock?

A. In the absence of an agreement to the contrary, the increase belongs to the tenant.

63. Q. Who is entitled to the fruit of the trees on leased land?

A. The tenant.

64. Q. As between the landlord and tenant, who is entitled to the annual crop on leased property?

A. The tenant, providing the crop has ripened or is severed from the soil during the terms of the tenant's lease.

65. Q. John rents a house and barn where he keeps a number of horses. He tells the landlord that he may have the manure to be made at the barn if he furnishes the straw there. This the landlord refuses to do. Later, the landlord claims the entire manure. Who is entitled to it?

A. The tenant. Manure made in livery stables, or in buildings unconnected with agricultural property, belongs to the tenant, unless, of course, there is a contract to the contrary.

66. Q. John leases a piece of farm land from Hill. John is unable to pay his rent and Hill re-enters, taking possession of the premises. Who is entitled to the growing crop planted by the tenant?

A. Hill. John's rights are lost by non-payment of rent.

67. Q. At the expiration of his lease, a tenant farmer seeks to remove manure made during his tenancy and from his own crops. May he do so?

A. No. This is done as a matter of public policy to prevent the deterioration of land.

68. Q. You agree to cultivate Thompson's land on shares. Before the cultivation of the crop is completed, you abandon the

land without justification. Are you still entitled to your share of the crops?

A. No. The landlord is entitled to take the whole crop; you would also be liable in damages for breach of contract to cultivate. However, you do not lose your right to a share of the crop by abandoning the cultivation of the land. You are justified in doing so, for example, when the behavior of the landlord provokes you into leaving.

69. Q. You enter into a written agreement to rent an apartment at \$50 per month for a period of one year. You give the prospective landlord a deposit as evidence of your good faith, obtaining a receipt. Your family, living in another city, is brought to town, sending on the furniture by express. The day before you are to move in, the landlord notifies you that he has rented the apartment to someone else. What can you do?

A. You can sue the landlord for breach of contract. You may recover, usually, damages which are the natural, direct and necessary consequence of the landlord's failure to give you possession of the apartment; specifically, you may recover the expense you and your family have been put to—railroad fare, shipping charges for household furniture and belongings, etc. You may not, however, recover for the inconvenience to which you and your family have been put.

70. Q. You obtain a cigar concession in a hotel. A few months after you acquire possession, the hotel is forced to close for lack of business. What are your rights?

A. You have a claim against the landlord for damages.

71. Q. After renting you a house, your landlord acts disagreeably to you, makes all sorts of insulting remarks, threatens to forcibly dispossess you and finally advertises the house for rent. What are your rights?

A. You may rightfully abandon the house, refuse to pay rent and file suit against the landlord for damages.

72. Q. A tenant leases an apple orchard but fails to take care of it properly. May the owner cancel the lease?

A. Yes. This is permitted so that further waste and destruction may be prevented.

FORM 24

AGREEMENT FOR A BUILDING LEASE FOR NINETY-NINE YEARS

An agreement made the 1 day of *May*, 19—, between *John Doe*, who and his heirs and assigns, unless the contrary appears, are hereinafter called the lessor, of the one part; and *Richard Roe*, who and his executors, administrators and assigns, unless the contrary appears, are hereinafter called the lessee, of the other part; whereby it is agreed as follows:

1. When and so soon as the lessee shall have erected, built, and finished the buildings mentioned in the fifth clause of this agreement, the lessor will grant to the lessee a lease of all that piece or parcel of land situate, *410 Bond St., Baltimore, Maryland*, and the real estate and buildings to be erected thereon, with the appurtenances, which premises are delineated in the plan annexed to this agreement, from the 2 day of *May*, 19—, for the term of ninety-nine years, at the yearly rent of \$10,000 for the first year of the said term, and the yearly rent of \$12,500 during the residue thereof, payable quarterly on the 2 day of *August, November, February, and May*, free and clear of all and every rate, tax, charge, duty, assessment, or imposition whatsoever, to which the landlord, tenant, or premises is or are, or hereafter shall or may be liable; the first quarterly payment of the said yearly rent of \$3125.00 to be made on the 2 day of *May*, 19—.

2. (Include here terms, conditions, covenants and provisos of intended lease.)

3. The lessee will accept such lease on the terms and conditions aforesaid, and execute a counterpart thereof when required, and pay the charges of and incidental to the preparation and execution of the same, as well as the charges of and incidental to these presents, and a duplicate hereof.

4. Until such lease shall be granted, the lessee will pay the rents agreed to be thereby reserved, and all such rates, taxes and assessments as hereinbefore mentioned, and will, as far as circumstances will admit, observe and perform the covenants and conditions to be contained in the said lease, as if the same had been actually granted, and the lessor shall have all such remedies for recovering rent, and for breach of any covenant, as if the said lease had actually been granted.

5. The lessee will, on or before the 15 day of *July* next, at his own costs and charges, pull down and remove the buildings now standing and being on the said piece of ground, and on the site thereof, in a good, sound, substantial and workmanlike manner and with fit and proper materials of all kinds, to be approved by the architect or surveyor of the lessor, and under the direction and inspection of such architect or surveyor and to his satisfaction, erect, build and complete, and in a workmanlike manner finish, a

good and substantial brick building fit for use as a *Motion Picture Theater*, and in all things conformable and agreeable to the specification thereof hereunder written; and will lay out and expend thereon the sum of \$50,000 and upwards; and also will bear, pay, and discharge the said architect's or surveyor's fees of five per cent on the expenditure, for superintending and directing the same.

6. The lessor or his architect, surveyor, or agent, may at all reasonable times during the continuance of this agreement, enter upon the said premises to view the state and progress of the work and building operations hereby agreed to or authorized to be executed and carried out.

7. The lessee shall be entitled to take for his own absolute use and benefit all materials of the said buildings so to be pulled down and removed as aforesaid.

8. The lessee shall not assign, or sublet, or otherwise part with, the benefit of this agreement, except with the consent in writing of the lessor first had and obtained.

9. In case the lessee shall not erect, build, complete, and cover in, and in all respects finish and make fit for use, such buildings as aforesaid to the satisfaction of the lessor's architect or surveyor on or before the said 2 day of *May*, 19—, or if the said yearly rent of \$12,500 shall be in arrear for the space of 30 days after the same shall have become due, or in case of breach of any of the stipulations herein contained, or if the lessee shall not proceed with the works with proper diligence, then and in any such case it shall be lawful for the lessor, if he shall think fit, to re-enter and take possession of the premises hereby agreed to be demised, and of all buildings, erections, plant, and materials which may be thereon, without making to the lessee any allowance or compensation in respect thereof.

10. This agreement shall not, nor shall anything herein contained or to be done in pursuance hereof, except the granting of a lease as aforesaid, operate as an actual or present demise of the premises, or any part thereof, or to create any leasehold interest therein or tenancy thereof, but the lessee shall only have a right to enter upon the premises for the purposes of performing this agreement. Any rents or yearly sums hereby agreed to be paid by the lessee, which shall be in arrear, shall be recoverable by the lessor as if the same were rent in arrear, and the lessee were the tenant of the premises.

In Witness whereof we have set here our signatures.

LESSOR

LESSEE

FORM 25

AGREEMENT TO LET FURNISHED APARTMENTS

Agreement made the 15 day of *June*, 19—, between *John Doe*, hereinafter called the lessor, of the one part, and *Tim Brown*, hereinafter called the lessee, of the other part.

The said lessor agrees to let, and the said lessee to take, the 5 rooms on the 2nd floor of the dwelling-house situate at 3000 *Denison St.*, in the county of *Calvert, Md.*; and also the furniture, articles and effects now being in the said rooms respectively; and also the other articles and things specified in the schedule hereunder written, for the term of 1 year from the 15 day of *June*, 19—, at the yearly rent of \$2,000, payable quarterly. And the said lessee hereby agrees to keep and preserve the said furniture and effects, so far as reasonable wear will permit, in a proper state and condition, and supply and replace any articles that may be destroyed, broken, or lost, by articles of a like kind and of equal value; and on the expiration or sooner determination of the said term to deliver up to the said lessor the said rooms, furniture and effects, or such articles as shall be so substituted in the place of any of the said articles as shall have been so destroyed or broken as aforesaid. Witness the hands of the said parties.

LESSOR

LESSEE

FORM 26

AGREEMENT FOR SALE OF LEASE, FIXTURES, AND GOOD
WILL OF BUSINESS

Agreement entered into this 1 day of *January*, 19—, between *John Doe*, hereinafter called the vendor, for himself, his heirs, executors and administrators, of the one part, and *Richard Roe*, hereinafter called the purchaser, for himself, his heirs, executors and administrators, of the other part.

1. The said vendor doth hereby agree with the said purchaser to sell and assign unto him, the said purchaser, all the workshop, warehouses, buildings and premises, situate, 2110 *Fayette St.*, whereon the said vendor has for several years past carried on the trade or business of *Furniture Manufacturer*, and which he now holds for the residue of a term of 5 years, under an indenture of lease dated the 1 day of *January*, 19—, made between *Sam*

Brown as lessor, of the one part and the said vendor as lessee, of the other part; as also all the fixtures, engines, machinery, utensils, tools and implements used or employed in carrying on the said trade or business, together with the said business and the good will of the same.

2. In consideration whereof, the said purchaser doth hereby agree with the said vendor to purchase the residue of the said term in the said premises, as also the said fixtures, engines, machinery, utensils and implements used or employed in carrying on the said trade or business in or upon the said premises, together with the said business, and the good will thereof, upon the terms and conditions hereafter mentioned.

3. It is mutually declared and agreed by and between the said vendor and purchaser that if the attorney of the said purchaser shall approve of the title of the said vendor the said vendor will, on the 15 day of *February* next, at the cost of the said purchaser, by proper deed of assignment, assign the said lease, workshop, warehouses, buildings, and premises, with all usual and proper covenants, unto the said purchaser, his executors, administrators, and assigns, for all the residue of the said term of 5 years; and also all the fixtures, engines, machinery, utensils, tools and implements employed in carrying on the said trade or business in or upon the said premises; and which said deed of assignment, in addition to the usual and ordinary covenants, shall also contain a covenant on the part of the said vendor that he will from time to time and at all times hereafter, recommend the said purchaser to all the customers of him the said vendor, and use his utmost endeavors to induce them to deal with the said purchaser; and that the said vendor shall not, at any time hereafter, either directly or indirectly, alone or in partnership with any other person or persons whomsoever, carry on the trade or business of a *Furniture Manufacturer* at *Fayette St.*, or any other place or places within the distance of twenty miles thereof.

4. Immediately upon the execution of the said deed of assignment, the said purchaser shall pay unto the said vendor the sum of \$20,000 as for the purchase of the residue of the said term in the said workshop, warehouses, buildings, and premises, and for the purchase of the said trade or business, and the good will thereof. Also, within the space of 3 months, a valuation shall be made and taken of the said fixtures, engines, machinery, utensils, tools and implements, by two indifferent persons, one to be chosen by the said vendor, and the other to be chosen by the said purchaser, who, previously to their entering on their reference, shall choose an umpire between them, whose decision, in case the said referees shall not agree, shall be binding on both parties; and in case either of the said parties shall refuse to name a referee within seven days after request by the other party, then the referee named by the other party may proceed along, and his award shall be conclusive on both parties.

5. The said purchaser shall pay or secure unto the said vendor the amount of such valuation by four equal instalments, at three, six, nine and

twelve calendar months. Further, the said vendor shall remain in the possession of all and singular the said premises which are hereby agreed to be assigned, with full and free liberty to have, hold, use and enjoy the same in the same manner as heretofore, up to the 1 day of *February* next; and shall pay and discharge all rents, rates, taxes and other outgoings up to that period, on which day the possession of all the said premises shall be delivered to the said purchaser.

In witness Whereof we have set down our signatures.

WITNESS

PURCHASER

VENDOR

FORM 27

LEASE OF CITY PROPERTY—NEW YORK CITY LEASE

This indenture, made this 1 day of *June*, in the year one thousand nine hundred and ———, between *John Doe*, hereinafter called the lessor, party of the first part, and *Richard Roe*, hereinafter called the lessee, party of the second part:

Witnesseth: that the lessor has agreed to let and hereby does let and demise unto the lessee, and the lessee does hereby take and hire from the lessor, the *Vacant Store*, located at _____, to be used as drug-store for the term of 5 years, to commence on the 1 day of *June*, 19—, and to end on the 1 day of *June*, 19—, at the yearly rent of \$3600 payable in equal *monthly* instalments of \$300 each in advance on the 1 day of *each month* until said expiration of the term, but the said term shall be subject to the limitations hereinafter mentioned in paragraphs numbered tenth and eleventh.

The above letting is upon the following conditions and covenants, all and every one of which the lessee *does* covenant and agrees to and with the lessors to keep and perform:

1. To pay the rent at the times and in the manner herein provided.
2. To pay and discharge all debts of every kind, which, during the term hereby granted, may be imposed upon or grow out of or become a lien upon the said premises, or any part thereof, within thirty days after the same shall be payable.
3. To promptly comply with and execute, at the lessee's own cost and expense, all laws, rules, orders, ordinances and regulations of the city of New York or any of its boroughs, and of any and all of its departments and bureaus, and of the county and state authorities, and of the Board of Fire underwriters, which shall impose any duty upon the lessors or the lessee with respect to the premises hereby demised or the use thereof.

4. To make and pay for all necessary repairs, including repairs to the roof and the exterior of said premises and to the sidewalks in front of the same, of whatsoever nature required to keep the premises in good order and condition during said term, and, at the expiration of said term, to deliver up and surrender the said premises in as good state and condition as they were at the commencement of the said term, damages by fire not occasioned by the negligence of the lessee or the lessee's agents, and damages occasioned by the direct, sudden and violent action of the elements excepted.

5. To keep the sidewalk in front of said premises free from rubbish and incumbrances and to remove ice and snow therefrom with all diligence.

6. To permit the lessors and their agents to enter upon the premises or any part thereof, at all reasonable hours, for the purpose of examining the same or making such repairs or alterations as may be necessary for the safety or preservation thereof, and no claim or action for damages or set-off of rent by reason or on account of such entry, repairs or alterations, shall be made, had or allowed.

7. To permit the lessors or their agents to enter upon and show the premises to persons wishing to hire or purchase the same at all reasonable hours, and, during the three months next preceding the expiration of the term, to permit the usual notice "To Let" and, at any time, the notice of "For Sale" to be placed upon the doors or walls of said premises, and remain thereon without hindrance or molestation.

8. To protect the lessors and save them harmless from any and all liability for any damage to any occupant of the said premises or to any other person, during the said term, occasioned by or resulting from the breakage, leakage or obstruction of the water, gas or soil pipes or of the roof or rain ducts, or other leakage or overflow in or about the said premises, or from any carelessness, negligence, or improper conduct on the part of the lessee or the lessee's agents, on, in or about the said premises or the sidewalk in front of the same, and the lessors shall not be liable for any damage, loss or injury to the person, property or effects of the lessee or any other person, suffered on, in or about the same by reason of any present, future, latent or other defects in the form, character or condition of said premises or any part or portion thereof, and the said rent shall not be diminished or withheld by reason or on account of any such loss or damages.

9. No alteration, addition or improvements shall be made in or to the premises without the consent of the lessors in writing, and all additions and improvements made by the lessee shall belong to the lessors.

10. If, during the term of this lease the demised premises shall be destroyed by fire, the elements, or any other cause, or if they shall be so injured that they can not be repaired with reasonable diligence within 6 months, then this lease shall cease and become null and void from the date of such damage or destruction and the lessee shall immediately surrender the premises to the lessors and shall pay rent only to the time of such sur-

render, and the foregoing provision of this paragraph shall be a limitation of this lease, but, if the premises shall be repairable within 6 months as aforesaid, then the lessors may repair the same with all reasonable speed, and the rent shall cease until such repairs shall be completed, provided, however, that this lease shall continue of full force and effect, unless the lessors shall neglect to commence such repairs within seven days after the lessee shall notify them of such damage, except as to the payment of rent, and provided, further, that in case any portion of the said premises shall during the period of such repairs be fit for the purpose for which these premises are demised, then the rent shall be equitably apportioned and paid for the part so fit for occupancy. It is expressly agreed that the provisions of section 197 of the Real Property Law of the State of New York shall not apply to the estate hereby granted or to the premises hereby demised.

11. That the lessee will not assign this indenture or the estate or term hereby granted, or any part thereof, or let or underlet the said premises, or any part thereof, without the lessors' written consent thereto, or use the said premises, or any part thereof, for any purpose deemed extra-hazardous on account of fire, or contrary to law or good morals or to the city ordinances and regulations. It is expressly understood and agreed that the stipulations contained in this paragraph and in the paragraphs numbered 3 and 6 hereof, respectively, shall be limitations of this lease; and, in case of a violation of any one or more of such stipulations, this lease shall become null and void and the estate and term hereby granted shall cease and determine, but without prejudice of any right of action on the part of the lessors for damages for any such violations.

12. That, if the lessee *Richard Roe* shall neglect or fail to pay any tax, assessment, water rent or meter charges, or to make any of the repairs hereinbefore mentioned in paragraph 4, or, if any liability for damages or otherwise shall be imposed upon the lessors by reason of the failure of the lessee *Richard Roe* to observe or perform any covenant or condition herein contained, or, if by like reason the lessors shall be put to any other charges or expense, or any charge or lien shall be imposed on said premises, the lessors shall have the right and privilege, at their option, to pay such tax, assessment, water rent or meter charges, or pay for such repairs as they may make pursuant to the provisions contained in paragraph numbered 6 hereof, or to discharge such liability, charge or lien, or any portion thereof, with any interest or penalties thereon, and the amount of such tax, assessment, water rent or meter charges, and the amount paid for such repairs, and the amount paid by the lessors in discharging such liability, charge or lien, and in defraying such charges and expense shall, after notice thereof to the lessee *Richard Roe*, become rent, and the instalment of rent next payable under the provisions of this lease shall be augmented by the amount so paid as aforesaid, and, upon default of the lessee *Richard Roe* in the payment of any instalment or instalments of rent as thus augmented,

in addition to all other appropriate remedies, summary proceedings for the removal of the lessee from the possession of the said premises for the nonpayment of the rent as thus augmented may be instituted and prosecuted by the lessors in the same manner as would be lawful in case of the nonpayment of the rent herein otherwise reserved.

13. If default be made in the observance or performance of any of the covenants or conditions of this lease, it shall be lawful for the lessors to re-enter and resume possession of said premises, and the same to have again, repossess and enjoy, or to dispossess and remove all persons and their goods and chattels therefrom without liability in law or equity for any damage caused by such removal. The lessee *does* hereby expressly waive the service of any notice in writing of intention to re-enter, as provided for in the third section of an act entitled "An Act to Abolish Distress for Rent," passed May 13, 1846. In case of such re-entry, or, if the premises become vacant, or the lessee is dispossessed by summary proceedings, the lessee *Richard Roe* shall be liable for the amount, which the rent hereby reserved would equal for the remainder of the term hereby granted, in the same manner as he would otherwise be liable for said rent, provided, however, that the lessors may relet the premises or any part thereof for the remainder of the term for the account of the lessee *Richard Roe*, and the lessee *does* expressly covenant and agree to pay and make good to the lessors any deficiency in the amount of rent and also the expense of the lessors in re-entering and reletting.

14. That failure of the lessor to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the lessor's right to thereafter enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

The lessee herewith deposits with the lessors the sum of \$100.00, the receipt whereof is hereby acknowledged, the same to be held by the lessors as security for the full and faithful performance and observance by the lessee of all the terms, covenants and conditions herein contained, and to be returned to the lessee as, when and provided that the lessee shall have fully performed and observed all of the said terms, covenants and conditions on *his* part to be performed and observed; and it is expressly understood and agreed that the sum so deposited is not an advance payment of or an account of the rent herein reserved, or any part or instalment thereof, or a measure of the lessors' damages, and in no event shall the lessee be entitled to return or particular application of the said sum or any part thereof, until the full end of the term hereby granted, and until a reasonable time and opportunity shall have been had thereafter to inspect the said premises for the purpose of determining whether the terms, covenants and conditions hereof have been fully performed and observed; and it is further agreed that the issuance of a warrant in summary

proceedings shall not effect a cancellation of this lease so as to make sooner recoverable the said sum or any part thereof.

All of the aforesaid agreements, covenants and conditions should apply to and be binding upon the parties hereto, their heirs, executors, administrators, successors, and assigns.

In witness whereof, we have set down our signatures.

LESSOR

LESSEE

In the presence of *John Doe*.

In consideration of the letting of the premises above mentioned to the above-named *Lessee*, and the sum of one dollar to *him* paid by the said lessors, the undersigned, do hereby covenant and agree to and with the said lessors, their legal representatives and assigns, that if default shall at any time be made by the said *Lessee* in the payment of the rent or the performance of the covenants above expressed on his part to be paid and performed, that he will well and truly pay the said rent, or any arrears thereof, that may remain due unto the said lessors, and also all damages that may arise in consequence of the non-performance of said covenants, or either or any of them, without requiring notice of any such default from the said lessors.

Witness my hand and seal.

(seal)

GUARANTOR

In the presence of *John Doe*.

FORM 28

LEASE OF DWELLING HOUSE

Indenture made this 1 day of *June*, 19—, between *John Doe*, hereinafter called the lessor, which expression shall include his heirs and assigns, where the context so requires or admits, and *Richard Roe*, hereinafter called the lessee, which expression shall include the executors, administrators, and assigns, where the context so requires or admits. The said lessor doth hereby demise and lease unto the said lessee a certain dwelling house situate in the city of *Louisville, Kentucky*, and numbered 4000 *N. Western Parkway*. To hold the premises hereby demised unto said lessee from the day of the date hereof for the terms of 3 years, the said lessee paying therefor

the rent of \$3,600 dollars for each and every year, and in the same proportion for any part of a year, by equal quarterly payments on the first days of *September, December, March,* and *June* in every year, the first of such payments to be made on the 1 day of *September* next. And the said lessee doth covenant with the lessor:

1. That he will, during the continuance of the term hereby granted, pay said rent hereinbefore reserved at the times at which the same is made payable;

2. That he will also, from time to time during said term, pay all taxes, charges, and water rates which may be assessed upon the demised premises, or on the owner or occupier, in respect thereof, and that he will not suffer nor commit any waste of the premises;

3. That he will, during the said term, keep the said premises in good and tenantable repair, externally and internally, reasonable wear and tear excepted;

4. That he will make no alterations or additions to or upon said premises without the consent of the said lessor being first obtained in writing;

5. That he will not assign this lease nor underlet the said premises, or any part thereof, without such previous consent in writing (but such consent shall not be unreasonable or arbitrarily withheld to an assignment or underletting of said premises to a respectable and a responsible person);

6. That the lessor or his agents may, at reasonable times, enter upon said premises to examine the condition of the same;

7. That he will, at the determination of said tenancy, quietly yield up the said premises, with the fixtures which are now or at any time during said term shall be thereon, in as good and tenantable condition, in all respects, reasonable wear and use and damage by fire and other unavoidable casualties excepted, as the same now are.

Provided always, and these presents are upon the condition, that if said rent, or any part thereof, shall at any time be in arrear or unpaid, or if the lessee shall at any time fail or neglect to perform or observe any of the covenants, conditions, or agreements herein contained and on his part to be performed and observed, or if the lessee shall become bankrupt or insolvent or shall compound with his creditors, then and in any such case it shall be lawful for the lessor or any person or persons duly authorized by him in that behalf, without any formal notice or demand, to enter into and upon said demised premises, or any part thereof, in the name of the whole, and the said premises peaceably to hold and enjoy thenceforth as if these presents had not been made, without prejudice to any right of action or remedy of the lessor in respect of any antecedent breach of any of the covenants by the lessee hereinbefore contained.

Provided also, that in case said buildings and premises, or any part thereof, shall at any time be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be unfit for occupation or use, then the

rent hereby reserved, or a fair and just proportion thereof, according to the nature and extent of the damage sustained, shall be suspended and cease to be payable until said premises shall be rebuilt or made fit for occupation and use by the said lessor, or these present shall thereby be determined and ended, at the election of the said lessor.

In Testimony Whereof,

LESSOR

LESSEE

FORM 29

LEASE OF A HOUSE, WITH USE OF FURNITURE, PLATE,
LINEN, ETC.

Agreement made this 1 day of *June*, 19—, between *John Doe* hereinafter called the landlord, of the one part, and *Richard Roe* hereinafter called the tenant, of the other part. The landlord agrees to let and the tenant agrees to take the house situate and being No. 4667 *Park Heights Ave.*, in the *City of Baltimore, State of Maryland*, with the outbuildings, stable, garden, and appurtenances thereto belonging, together with the use of the fixtures, furniture, plate, linen, utensils and effects particularly mentioned in the schedule hereunder written; and also with the right to such produce of the garden as the tenant shall require for the use of himself and his household and establishment; and also with such attendance as is hereinafter mentioned, for the term of six calendar months commencing from the 1 day of *June* next, at the rent of \$600 for the said term, payable in advance, upon the execution of this agreement. The landlord agrees to pay all rates, taxes and assessments, except gas and water rates, and to make at his own cost all repairs of the premises (except as hereinafter mentioned) which may be necessary during the term, upon being requested by the tenant so to do, and to leave or provide *his* servant, who shall reside in the house and attend upon the tenant, and also a gardener, and to pay the wages of such indoor servants and gardener. The tenant agrees to pay the said rent in manner aforesaid, and to leave the premises, including the said fixtures, furniture, plate, linen, utensils and effects, in as good state and condition in all respects as the same now are, reasonable wear and tear excepted, and to replace such of the same respectively as shall be broken, damaged, or missing, with other articles of the same pattern and equal value; and to permit the said indoor servants to reside in the house, and to provide them with proper and sufficient board and nourishment; and to

bear all expenses of washing and mending all table or house linen which he shall use; and not to assign or underlet the premises, or any part thereof, without the previous consent of the landlord. Provided that if there shall be any breach by the tenant of the conditions herein contained, the landlord may re-enter upon any part of the premises in the name of the whole, and determine the tenancy without prejudice to his other remedies.

LANDLORD

TENANT

FORM 30

LEASE OF APARTMENT FOR A YEAR

Indenture made the 1 day of *June*, 19—, by and between *John Doe*, of _____, hereinafter called the lessor, which expression shall include his heirs, and assigns and *Richard Roe*, of _____, hereinafter called the lessee, which expression shall include his executors, administrators, and assigns. The lessor doth hereby demise and let unto the lessee all those unfurnished rooms or apartments consisting of 5 rooms on the 2nd floor of the dwelling house numbered 5 in *Pine* street, in said city of *Baltimore, Md.*, together with the free use of the front entrance, the hall, staircase, and passageways leading to said rooms, the water closet and bathrooms, and part of the cellar for the storage of fuel. To hold the same from the 1 day of *July* next, for the term of 1 year, determinable, nevertheless, as hereinafter mentioned, yielding and paying therefor the annual rent of \$2,000, which is to include all taxes and water rates (and furnace heat).

The lessor agrees that he will at all times keep the front entrance, hall staircase, and passageways leading to said rooms, and also the water closet and bathroom, clean, dry, and free from noise and annoyance.

It is mutually agreed that the said lessee may quit the said rooms and apartments at any time on giving to the said lessor 4 weeks' notice of his intention so to do, and on paying a proportionate part of the said rent up to the time of quitting the same, and also that the said lessee shall be at liberty to terminate the said tenancy, and to quit the said rooms and apartments, on any breach of either, of the agreements herein contained on the part of the lessor to be performed.

LESSOR

LESSEE

FORM 31

LEASE OF APARTMENT—MONTH TO MONTH TENANCY

This agreement, made and entered into this 10 day of May, 19—, between *John Doe*, party of the first part, hereinafter called lessor, and *Richard Roe*, party of the other part, hereinafter called lessee. (It is mutually agreed by the parties hereto, where either is mentioned herein, that same refers to their heirs, executors, administrators, successors or assigns, who are bound as fully and completely by the covenants herein as the parties hereto.)

Witnesseth: That the said lessee has this day rented and leased from said lessor the following described *Unfurnished* apartment: *3 Rooms, Kitchen and Bath, located at No. 10 Vine Street, in the City of Akron, Ohio*, for the term of *1 year*, commencing on the *1* day of *June*, 19—, and ending on the *1* day of *June*, 19—, for which the lessee agree to pay the lessor, at his office, promptly on the first day of each rental month, in advance, a monthly rental of \$75.00; and on failure of lessee to pay same when due, all further rent under this contract shall immediately become due and payable, and the said lessor has the right, at his option, to declare this lease void, cancel the same, re-enter and take possession of the premises. Lessor, at his option, upon a breach of this contract, may card for rent and sublet the premises at the best price obtainable by reasonable effort, under private negotiations, and charge the balance, if any, between said price of subletting and the contract price to lessee and hold him therefor. Such subletting on the part of the lessor will not in any sense be a breach of the contract on the part of the lessor, but will be merely as agent for the lessee and to minimize the damage. Said lessor is not required, however, to let same for any other purpose than that specified herein. These rights of the lessor are cumulative and not restrictive of any other rights under the law, and failure on the part of lessor to avail himself of these privileges at any particular time shall not constitute a waiver of these rights.

It is further mutually agreed as follows:

1. Lessee hereby waives and renounces for himself and family any and all homestead and exemption rights he or they may have under or by virtue of the laws of this state, or the United States as against any liability that may accrue under this contract. Lessee agrees to pay all costs and 15 per cent attorney's fees on any part of said rental that may be collected by suit or by attorney after same has become due.

2. Lessee is to repair, at his own expense, any damage to water or steam pipes caused by freezing or any neglect on his part, also to be responsible for all damages to the property of lessor's other tenants in said building, if there be any, or to the adjoining buildings, caused by the overflow or breakage

of water works in said premises, during the term of this lease. Lessee agrees not to sublet said premises, or any part thereof, without the written consent of said lessor, and will deliver said premises at the expiration of this lease in as good order and repair as when first received, natural wear and tear excepted.

3. Lessee hereby releases said lessor from any and all damages to both person and property during the term of this contract.

4. Should the premises be destroyed or so damaged by fire as to become untenable, this lease shall cease from the date of the fire.

5. Lessee is to make no changes of any nature in the above named premises without first obtaining written consent from said lessor or his agent; and the lessor or his agents shall have the right to enter said premises at reasonable hours, to examine the same, make such repairs, additions or alterations as may be deemed necessary for the safety, comfort and preservation of said building, and to enter upon said premises at any time to repair or improve lessor's adjoining property, if any.

6. Lessee agrees not to permit any act which would vitiate or increase the fire insurance policy upon said property; to pay all electric light, heat, water, gas and power bills accruing against said property during the term of this contract, and to comply with all rules, orders, ordinances and regulations as attached hereto and of the city government of the city of *Akron*, in any and all of its departments.

7. In the event bankruptcy or state insolvency proceedings should be filed against lessee, his heirs or assigns, in any federal or state court, it shall give the right to said lessor, his heirs or assigns, at their option, to immediately declare this contract null and void, and to at once resume possession of the property. No receiver, trustee, or other judicial officer shall ever have any right, title or interest in or to the above described property by virtue of this contract.

8. Lessor has the privilege of carding the above described premises for rent or for sale at any time within thirty days previous to the expiration of this lease, and during the said time to exhibit said premises during reasonable hours.

In Witness Whereof, we have hereunto set our hands, this the day and year above written.

LESSOR

LESSEE

FORM 32

ASSIGNMENT OF A LEASE BY INDORSEMENT

This agreement, made the 1 day of *June*, 19—, between the within named *John Doe*, of _____, hereinafter called the vendor, of the one part, and *Richard Roe*, of _____, hereinafter called the purchaser, of the other part, witnesseth, that in consideration of *one* dollar to the said vendor paid by the said purchaser, and of the covenants of the said purchaser hereinafter contained, the said vendor doth hereby assign unto the said purchaser, his executors, administrators and assigns, all that tenement demised to the said vendor by the within-written lease, with all rights, easements and appurtenances as within mentioned; and all the estate, right, title and interest of the said vendor in and to the said premises:

To have and to hold the said premises unto the said purchaser, his executors, administrators and assigns, for the residue of the term granted by the within-written lease, at the rent thereby reserved, and subject to the covenants by the lessee and conditions therein contained, and thenceforth to be performed and observed by the said purchaser; and the said purchaser doth hereby for himself, his heirs, executors and administrators, covenant with the said vendor, his executors and administrators, that he and they will henceforth pay the rent reserved, and perform the covenants on the part of the lessee contained in said lease, and will keep the said vendor, his executors and administrators, indemnified against all actions, claims and liability for the nonpayment of said rent, or breach of the said covenants, or any of them.

 ASSIGNOR

 ASSIGNEE

FORM 33

LICENSE TO SUBLET

I, the undersigned, hereby consent that *John Doe*, lessee in a certain lease made by me to him, dated the 1 day of *June*, 19—, for the term of 5 years, may underlease the premises demised to *Richard Roe*, for the term of 2 years. Provided that this license shall be restricted to the particular underlease hereby authorized, and the covenant in said lease made by me against assigning or underletting shall remain in full force and effect.

Dated the 10 day of *July*, 19—.

 LESSOR

FORM 34

LICENSE TO SUBLET A PART OF LEASED PREMISES

I, the undersigned, being the lessor named in a lease made between myself, of the one part, and *Richard Roe*, of _____, the other part, do hereby consent that the said lessee may underlease a portion of the premises comprised in said lease, namely, *one bedroom of said apartment*, unto *John Doe*, of _____, for the whole remaining term of said lease, provided that this consent shall not authorize any further underletting, or parting wholly or partially with the possession of said premises, or any part thereof, or prejudice or affect any of the covenants, conditions, or provisions in the said lease contained except to the extent hereinbefore expressed.

Witness my hand the 1 day of *July*, 19—.

LESSOR

FORM 35

NOTICE FROM LANDLORD TO TENANT

I hereby give you notice to quit, and deliver up to me on the 1 day of *June*, 19—, the premises now held by you as my tenant, at No. 10, on *Pine Street*, in the city of *Baltimore, Md.*

Dated this 1 day of *April*, 19—.

LESSOR

FORM 36

LANDLORD TO TENANT FROM YEAR TO YEAR TO QUIT

I hereby give you notice to quit, and deliver up to me on the 1 day of *June* next, the possession of all that dwelling house, with the garden and appurtenances thereto belonging, situate at *10 Vine St.*, in the county of *Calvert*, which you now hold under me as tenant from year to year.

LANDLORD OR LESSOR

FORM 37

LANDLORD TO TENANT TO QUIT FOR NON-PAYMENT
OF RENT

I hereby notify you to quit and deliver up, in 10 days from this date, the premises now held by you as my tenant at No. 14 Wolfe Street.

LANDLORD

FORM 38

LANDLORD TO TENANT TO MAKE REPAIRS

I do hereby give you notice, and require you to put in good and tenantable repair the dwelling house and premises situate at 5 Pearl St., which you now hold under and by virtue of a certain indenture of lease executed by me to you, bearing date the 1 day of June, 19—, pursuant to your covenant in such indenture of lease contained, and particularly that you *Fix and Repair All Broken Windows on Said Premises.*

LANDLORD

FORM 39

NOTICE TO TENANT TO MAKE REPAIRS

In pursuance of the stipulation contained in the lease made by me to you, dated the 1 day of June, 19—, whereby it was agreed that you should keep in good repair the premises described in said lease, which you now hold as my tenant (or which you lately held as my tenant), I hereby give you notice, and require you within 30 days from the date hereof, to put said premises in good repair, and particularly that you make in a workmanlike manner the several repairs mentioned in the schedule hereunder written (or mentioned in the specification by my architect hereunder written).

LANDLORD

FORM 40

TENANT TO LANDLORD TO TERMINATE A LEASE
CONTAINING AN OPTION FOR ANOTHER TERM

City of *Baltimore*, State of *Maryland*
1 day of April, 19—

To *John Doe*:

By that certain lease made between yourself of the one part and myself of the other part on the 11 day of *May*, 19—, the premises now occupied by me as your tenant were demised for a term of 3 years from the 1 day of *May*, 19—, with the provision that I should have the right and option to lease the said premises for a like term on the same conditions, and to give you notice if it should be my desire not to do so. In pursuance thereof, I hereby notify you that it is my intention to terminate said lease at the expiration thereof, on the 1 day of *May*, 19—, when I shall quit and deliver up to you the possession of the buildings and lands therein comprised.

TENANT

FORM 41

NOTICE BY TENANT OF INTENTION TO QUIT

I hereby give you notice that I shall quit and deliver up to you, on the 1 day of *June* next, the possession of all that dwelling house, with the garden and appurtenances thereto belonging, situate at 10 *Small St.*, now held by me of you.

Witness my hand this 1 day of *May*, 19—.

TENANT

FORM 42

TENANT TAKING OPTION FOR ANOTHER TERM

City of *Baltimore*, state of *Maryland*
1 day of *June*, 1944

To *John Doe*:

By a certain lease executed on the 1 day of *May*, 19—, between yourself of the one part and myself of the other part, you demised to me for a term of 3 years from the date thereof the premises which I now occupy, with the

proviso that I should have the right and option to lease said premises for a like term on like conditions. In the exercise of the power reserved in said lease I hereby notify you of my intention to lease said premises for another term.

TENANT

FORM 43

TENANT TO LANDLORD OF DESIRE TO PURCHASE
THE PREMISES UNDER OPTION

In pursuance of the power contained in a lease dated the 1 day of *June*, 19—, and made between yourself of the one part, and myself of the other part, I desire and agree to purchase the premises comprised in the said indenture at the sum of \$5,000; and I request you, on or before the expiration of 60 days from the date hereof, to deliver to me a good and sufficient deed of conveyance of said premises in accordance with the provision in said indenture.

TENANT

CHAPTER XI

Partnership

THERE ARE THREE ways, generally, in which a business enterprise may be carried on. The first is where the business is owned solely by one man, the proprietor, who retains all the profits for himself and is alone responsible for the firm's debts and obligations. Most small concerns are still conducted in this fashion, occasionally even some very large ones.

A second type of legal organization is the partnership. A partnership represents a division of responsibility and profits. It often happens, for example, that one individual, unable by himself to raise the requisite capital, is forced to seek an association with others whose wealth, combined with his own, fulfills the needs of the enterprise. On the other hand, one prospective partner may have money to invest but not sufficient experience to make a go of the venture, while the other prospective partner possesses experience but lacks capital. By combining the two and forming a partnership, a solution is provided.

Forming a partnership, then, has practical advantages; but it is fraught with dangers, too. By its very nature, a partnership is a highly personal relationship which should not be entered into lightly or without careful investigation of the character and financial background of the proposed members. For partners not only share in the profits, but in the losses as well. As we shall see, one partner has the inherent power to bind other members within the partnership. Moreover, the personal assets of each partner may be

seized by creditors of the firm to pay off partnership obligations; or, to take another example, the assets of one member may be taken to pay off the theft or defalcation of dishonest members.

How is a partnership formed? What are the rights, duties and obligations of partners? How may a partnership be dissolved? These are some of the questions answered in the following pages.

1. *Question:* What is a partnership?

Answer A partnership is an association of two or more persons to carry on, as co-owners, a business for profit. It is less formally organized than a corporation, and burdens of taxation and the filing of returns and statements are much lighter. Unlike a stockholder in a corporation, a partner is subject to personal liability for the obligations of the partnership; he is also subject to liability for any loss due to the incompetence or fraud of his associates.

2. *Q.* What are some of the rights and obligations of a partnership?

A. The acts of each partner are the acts of all partners; each partner is agent for the firm and for the other partners; all are liable, as partners, upon contracts made by any of them with third persons within the scope of the partnership business; not only is the partnership property liable for debts incurred by the partnership, but the individual property of each partner is also liable, each partner being individually liable for the acts of the partnership.

3. *Q.* What is the extent of a partner's liability?

A. A partner is liable for all debts regularly contracted by the firm.

4. *Q.* What is the difference between a limited and unlimited partnership?

A. The difference is the extent to which partners may be liable. In the usual or unlimited partnership, the partners are liable to creditors for firm debts, since, in partnership law, they are individual debts. Limited partnerships are organized to permit all or some members to limit their liability to creditors to the amount of their subscription to the capital stock.

5. Q. What is the difference between a general and special partner?
 - A. A general partner has ownership of the partnership property, or a share in such property, full powers of management within the partnership purposes and full personal liability. A special partner is an investor who receives a share of the property or profits, but has no powers of management and no personal liability beyond the amount of his investment.
6. Q. What is an ostensible partner?
 - A. He is a person who, though not actually a partner, represents himself as being one, or consents to being so represented by those who carry on the business. As far as third persons are concerned, who act on such representations, an ostensible partner is subject to liability as if he were an actual partner.
7. Q. What is a dormant or silent partner?
 - A. Such a partner is one whose name is not used and who is so inactive in the partnership that his relationship to it is generally unknown. A dormant or silent partner, however, is liable for all partnership obligations while a member of the partnership.
8. Q. What is an incoming partner and what is the extent of his liability?
 - A. An incoming partner is one brought into a going business as a new partner. He is not personally liable on old obligations, unless he actually assumes them. He is liable, however, for his capital contribution in the partnership property.
9. Q. What is a retiring partner?
 - A. He is one who, after a partnership is dissolved, ceases to be a partner in the business which is carried on by others. He remains liable for partnership obligations incurred while he was a partner, but is not liable for new obligations unless he fails to give the necessary notice of withdrawal. Those who continue a business after dissolution are called continuing partners.
10. Q. What is a surviving partner?
 - A. He is one who remains after the dissolution of the partnership or death of a partner or partners. A surviving partner

succeeds to the ownership of the partnership property and is charged with the duty of liquidation—unless, by agreement, the business is to be continued.

11. Q. What constitutes firm property?

A. Whatever is contributed to the firm by any partner, or is acquired by it, is firm property.

12. Q. To whom do property rights pass, upon a partner's death?

A. Upon the death of a partner, his property rights pass to the surviving partners, not to his heirs, devisees, administrators or executors. If the deceased partner is the last surviving partner, his rights pass to his executor or administrator.

13. Q. What should the partnership agreement (or Articles of Partnership) contain?

A. It should contain the names of the partners; the name of the partnership; the nature of the business to be conducted; when the partnership is to begin and how long it is to continue; the place where the partnership is to be carried on; the share each partner is to contribute, and the form in which it shall be contributed by him and at what time; the interest each partner shall have in the partnership (otherwise the interests are presumed to be equal, notwithstanding the fact that the contributions may be unequal); the liability for losses to be borne by each partner; the duties of each partner; when accountings shall be made between the partners; how much each partner shall be entitled to draw; how partnership books are to be kept; whether any partner is to draw a salary and, if so, the amount; how the partnership may be dissolved, the disposition of the good will and property and, finally, how disputes between the partners are to be settled.

14. Q. Must a partnership agreement be in writing?

A. No, but it is more desirable and affords greater protection to all parties if it is.

15. Q. May a person under legal age be a partner?

A. Yes. However, an infant incurs no liability and is not responsible for the debts of the firm during his infancy. When an infant comes of age, he may, if he wishes, affirm past transactions which will make him liable.

16. Q. John, age twenty, is a member of a partnership; he is known as such by persons dealing with the firm. Upon reaching twenty-one, John neither affirms nor disaffirms the partnership. Creditors now seek to hold John liable for the debts of the partnership. May they?
- A. Yes. A person who, before coming of age, represents himself to be a partner must, when he reaches his majority, notify creditors that he has ceased to be a partner if he wishes to avoid liability.
17. Q. Jones, Smith and Thompson form a partnership, Jones contributing \$5,000, Smith \$3,000 and Thompson his time and skill. In the absence of any express provision in the agreement, what share of the profits are the three partners entitled to?
- A. They are entitled to share equally in the profits. Upon dissolution, Jones and Smith are entitled to recover their contributions first, before Thompson receives his share.
18. Q. Smith & Company owns an automobile. What interest does Jones, a partner, have in the vehicle?
- A. The automobile is held as a "tenancy in partnership." This means that each partner has the right, with his co-partners, to the possession of the partnership property for partnership purposes. Neither partner, however, has the right to possess the automobile for any other purpose, without the consent of the other partner. On the death of one partner, his right to specific partnership property (the car, in this case) passes to the surviving partners. When the deceased is the last surviving partner, the partnership property passes to his executor or administrator. A partner cannot assign, transfer or sell partnership property except by and with the consent of all the partners.
19. Q. Arnold, owner of a zinc mine, enters into a written agreement with Bertelli, by which he agrees to furnish Bertelli a certain quantity of ore annually, for three years, on being paid \$10 per ton. Bertelli agrees to provide suitable buildings and machinery for the ore's conversion into paints, etc., and to divide with Arnold the profits of the enterprise, one-fourth to himself and the balance to Arnold. The cost of the buildings and machinery is to be paid out of the profits,

after a specified time. Creditors of Arnold now seek to hold the assets of Bertelli on the theory that Arnold and Bertelli are partners. Can they?

- A. Yes. In this example, Arnold and Bertelli are partners—each would be liable for partnership debts. There are both a community of interest and a sharing of profits. When you have this, you have a partnership.

20. Q. Lewis buys a half-interest in a manufacturing plant for \$10,000, agreeing to hire a manager at his own expense. Lewis agrees to pay the manager \$100 per month, as well as one-fourth of the net profits. It is also provided that the firm, if dissatisfied, may end the employment by notice, upon which the manager's future interest in the business or under the contract would cease. The manager is discharged on notice. There are no net profits. After his discharge, the manager seeks to have Lewis give an accounting, on the theory that he is a partner and hence entitled to one. Is he right?

- A. No. This arrangement is not a partnership, the payment of a share of the profits being merely incidental to the employment contract. As an employee, the manager is not entitled to an accounting which he could secure through the courts were he a partner.

21. Q. Jones owns a store building. Smith offers to rent it from Jones, proposing that Jones shall have one-third of the net profits of the business so rented. Are Jones and Smith partners in this enterprise, making Jones liable for Smith's losses or debts?

- A. No. Here, there is no intention to create a co-ownership in the business. In addition to a sharing in net profits by the participants in a business enterprise, they must intend to be co-owners of the business.

22. Q. An owner of a factory employs a manager to take charge, the manager to receive one-fourth of the net profits as his compensation. There is no understanding that the manager is to be a co-owner. When the factory becomes insolvent (unable to pay its debts), creditors seek to hold the assets of the manager on the theory that he is a partner. Can they?

- A. No. The manager is simply an employee, not a partner, and as such is not liable to creditors for losses, nor must he share losses with the owner.
23. Q. A literary society is organized for cultural purposes in which you become a member. The society, in the course of time, acquires \$4,000. Soon thereafter, you allege that the funds have been misapplied and seek to have the club dissolved. You also seek to obtain an accounting of its funds, although the by-laws of the organization forbid a dissolution while ten members remain, unless by unanimous consent. Will you succeed?
- A. No. The society is not a partnership, since it is not run for profit. The money acquired by the organization is merely incidental to its main purpose, which is literary.
24. Q. An insolvent partnership agrees with creditors that the business shall be continued under the supervision of a managing committee, designated by the creditors, until their claims are fully paid out of the profits. Are the creditors, who are parties to this agreement, liable as partners to the new creditors of the business?
- A. No. They are not co-owners of the business, since it is not carried on primarily for the creditors' benefit; hence, the creditors' interest in the property and in the profits is limited to the definite amount of their claims.
25. Q. What powers does a partner have?
- A. One of the most important is the power to bind the firm in the usual operation of the business it carries on. A partner also has apparent authority to replenish the stock in trade, buy and sell stock in the course of business and make contracts in reference to it.
26. Q. Two partners are in the radio business. One of them buys radios on the credit of the firm. He then pawns the radios for his own use. Is the other partner bound on the purchase?
- A. Yes. Every partner has the power to buy and sell stock in trade. It is immaterial whether the partner deflects from its proper use goods bought by him for the firm.

27. *Q.* Smith and Jones are partners in a dairy business. Smith sells one of the cows without Jones' consent. May Jones recover the cow from the purchaser?
- A.* Yes. A sale of capital assets with which the concern carries on its business (in this case, a cow) is not binding unless actually authorized or ratified by the other partners.
28. *Q.* Has a partner power to buy or sell real estate?
- A.* No, unless he is expressly authorized to do so.
29. *Q.* Smith and Jones are in the package liquor business. Smith borrows money from Cornwall, ostensibly on account of the firm and for firm purposes. He gives a note in the firm's name for its repayment. Actually, Jones never authorized the loan, received no benefit from it, nor did he affirm it. Cornwall now wants to hold Smith and Jones as partners, under Smith's apparent authority to bind the firm. May he do so?
- A.* Yes. If negotiable paper is issued, accepted or indorsed by a partner whose business requires the use of negotiable paper, the firm is liable. Hence, if one partner signs the names of all the partners, or the partnership name, all the partners are bound, provided the first partner had apparent authority to sign.
30. *Q.* Three men are partners in the sale of stock. One of the partners sells stock in a corporation to Jones, guaranteeing payment in a writing signed by the partnership name. The corporation in which the stock is held becomes insolvent, and Jones now seeks to hold all the partners liable on the guaranty. Actually, two of the partners never consented to or ratified the act of the third partner. May they be held?
- A.* Yes. A partner may make ordinary warranties or representations which will be binding on all the partners.
31. *Q.* Jones and Smith are partners in a grocery store. Reed, who owes the firm money, pays his bill to Jones who absconds. May Smith compel Reed to pay him again?
- A.* No. Payment to one partner is payment to the partnership.
32. *Q.* Robinson, a partner in a firm, buys shares in a mining company in his own name—without the authority of the other

partners, but with the money and on account of the firm. Who is entitled to the shares, Robinson or the firm?

- A. The firm. It is presumed, unless a contrary intention appears, that property acquired with partnership funds is partnership property.
33. Q. A package liquor store, operated by three partners, gives a note signed merely by the firm name. Are all three partners bound on the note?
- A. Yes. A partnership name is the name of *all* the partners. The use of that name, with the authority of the firm, binds all the members, even though one partner does not sign the note.
34. Q. A partnership firm desires to purchase real estate. Should title be acquired in the firm name, or in the names of all the members?
- A. Title should be taken in the names of all the members, or one of them in trust for the others. This must be done because title to real estate is a matter of record and must be lodged either in a natural person, or persons, or in a corporation.
35. Q. Jones, Smith, Roberts and Reed are partners in a sugar refinery business. Roberts is the managing partner, also doing business separately, with the consent of the others, as a sugar dealer. He buys sugar in his separate business, selling it to the firm at a profit without letting the other partners know that the sugar is his. Is the firm entitled to Roberts' profits on such sales?
- A. Yes. Each partner must account to the firm for any benefit derived by him, without the consent of the other partners, from any transaction involving the partnership.
36. Q. A firm is anxious to purchase some motor trucks. Jones, a partner, owns some trucks which are titled in another's name. Without revealing this fact, he induces his partner, Smith, to buy the vehicles. Upon discovering the facts, Smith wishes to cancel the transaction. May he?
- A. Yes. A partner must not turn partnership advantages to himself, or in any way oppose his interests to those of the

firm, unless there is consent and a full disclosure of all the important facts.

37. Q. Jones, Smith and Thompson form a partnership, each contributing \$5,000. It is understood that all shall be equally active in conducting the firm's affairs. The partnership lasts for a year. During that time, Jones goes to Europe for three months and Smith suffers poor health, remaining at home most of that time. Thompson puts in long hours to help keep the business going successfully. Upon dissolution, Thompson claims a right to a salary for the time when he alone kept the business going. Is he entitled to it?
- A. No. Each partner engages in the business for the profits to be made therein. Hence, no partner is entitled to extra compensation for services unless there is a specific agreement to this effect. This applies even where the duties of one partner are unusually burdensome, due to the neglect of the other partners.
38. Q. Jones and Smith are partners in an established business when Thompson is taken into the firm. At that time, Reed is a creditor of Jones and Smith. Is Thompson, by his entrance into the partnership, obligated also to Reed?
- A. Yes, but his liability can be satisfied only out of partnership property, not his individual property.
39. Q. After Smith's death, surviving partners in Smith, Jones and Company continue under the same name, arranging with Charles Smith, brother of the deceased John Smith, for the use of his name, although Charles Smith does not become a partner. Creditors of the firm now seek to hold Smith liable as a partner. May they?
- A. Yes. Charles Smith is a partner by "estoppel." This occurs when a person, by words or by conduct, represents himself, or permits another to represent him, as a partner in an existing partnership. Such a partner is liable to any such person to whom such representations have been made and who has, on the faith of such representation, extended credit. In the above illustration, creditors continued doing business with the firm, aware that Smith's name was used. Knowing this, Smith failed to repudiate the action. Charles Smith,

therefore, is liable to every person dealing with the firm—precisely as though he were an actual partner.

40. Q. How may a partnership be dissolved?

- A. 1. When the time stipulated in the agreement expires.
2. By mutual consent.
3. By transfer of a partner's interest.
4. By death of a partner.
5. By bankruptcy.
6. By judicial decree because of (a) internal dissension, (b) a partner's incapacity, (c) a partner's misconduct or, finally, (d) the financial failure of the business.

41. Q. John, Bill and Henry form a partnership. Shortly afterward, John retires from the business. Are Bill and Henry still partners?

- A. No. Retirement of a partner automatically dissolves a partnership, unless the enterprise is continued by the remaining partners in accordance with the Articles of Partnership or with the consent of all members. This is true, also, where a partner dies or becomes insane.

42. Q. Smith operates a hardware store. His son joins him in the business, under an agreement whereby he is to have one-half of the profits. The business is conducted under the name of "Smith and Son." A few years later, the son withdraws from the firm which is continued by the father under the old name, with the son's knowledge. Jones sells goods to the store, seeking to hold the son as a partner. May he?

- A. Yes. A person may be held liable as a partner because of his failure to notify others that the partnership is dissolved.

43. Q. Smith, Jones and Reed are partners. Jones withdraws. What should he do to protect himself against future liability as a member of that firm?

- A. Upon withdrawing, a partner should notify all those who may continue to deal with the firm in the belief that he is still a partner. Otherwise, he may be liable for the firm's indebtedness even after his withdrawal. He should give actual notice to all who have dealt with the firm. To all others, it suffices if he publishes notice of his withdrawal in a newspaper.

44. Q. Jones and Smith enter into Articles of Partnership for two years. After one year, Jones forcibly excludes Smith from the partnership place of business, refusing to permit him to further participate in firm affairs. Jones also refuses to pay Smith any share of profits or to make any division of partnership property. What can Smith do?
- A. He can sue for damages, his damages being the value of the partnership interest. He may also go into court to have the partnership dissolved, and ask for an accounting, as well as damages for breach of contract.
45. Q. Jones and Smith, having been partners, dissolve the firm, Jones taking over the business and property. Jones gives Reed several notes in the name of the old partnership. Is Smith bound by the notes?
- A. No. Unless Smith has expressly authorized the continued use of the old name of the firm for that purpose, he would not be bound.
46. Q. Jones and Smith are partners. The partnership is dissolved by consent; it is agreed that the assets and business of the firm shall be sold at auction. Jones, nevertheless, continues to carry on the business on the partnership premises, with the partnership property and capital. Must Jones account to Smith for the profits thus made?
- A. Yes. Where any member of a firm dies or otherwise ceases to be a partner, and the surviving or continuing partners carry on the business without any final settlement of accounts as between the firm and the outgoing partner, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled to such share of the profits made since the dissolution.
47. Q. A clause in a partnership agreement between Smith and Jones provides that, upon the death of either partner, the survivor shall purchase his share at a fixed value. Smith and Jones continue their business in partnership after the expiration of the term, which is two years. Subsequently, Smith dies and Jones now seeks to buy Smith's share at the fixed value agreed upon in the original partnership agreement. May he do so?

- A. Yes. Where a partnership is entered into for a fixed term and is continued after its expiration without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term.
48. Q. Jones, Smith and Reed are partners. By consent, Reed withdraws from the firm, leaving Jones and Smith. Is Reed still liable for the debts incurred while a member of the firm?
- A. Yes. He cannot, by withdrawing, deprive creditors of their rights against him, even though he has an agreement with the remaining partners whereby they assume the existing indebtedness.

FORM 44

SIMPLE PARTNERSHIP AGREEMENT

This agreement made this 4th day of August, 19— by and between John Doe of the one part and of Harry Smith of the other part, witnesseth as follows: that the said parties hereby agree to become partners in the business of "wholesale groceries," under the firm name of Doe, Smith and Company, for the term of five years from the date hereof, upon the terms and conditions hereinafter stated, to wit:

1. That the business shall be carried on at number 487 N. Bond Street in the City of Baltimore, State of Maryland, or at any other place that may hereafter be mutually agreed upon for that purpose.

2. That proper books of account shall be kept, and therein shall be duly entered, from time to time, all dealings, transactions, matters and things whatsoever in or relating to the said business; and each party shall have full and free access thereto at all times, but shall not remove the same from the premises.

3. That the capital requisite for carrying on the said business shall be advanced by the said partners in equal parts, and the said capital, and all such stock, implements and utensils in trade, purchased out of the partnership funds, as well as the gains and profits of the said business, shall belong to the said parties in equal parts.

4. That each party shall be at full liberty to draw three hundred dollars monthly for his own private use, on account, but not in excess of his presumptive share of the profits, so long as the said business shall be found profitable, and the capital advanced as aforesaid shall remain unfinished.

5. That neither party shall become bail or surety for any other person; nor lend, spend, give or make away with any part of the partnership property; or draw or accept any bill, note, or other security in the name of the said firm, except in due course of the said partnership business.

6. That an account of the stock, implements and utensils belonging to the said business, and of the book debts and capital shall be taken and a statement of the affairs of the said partnership be made yearly, to be computed from the date hereof, when the sums drawn by each party during the preceding year shall be charged to his share of the profits of the said business; but if, at the end of any one year of the said partnership, it shall be found to be unprofitable, the said partnership shall thereupon be dissolved, unless it shall be occasioned by some unavoidable loss or accidental circumstance.

7. That each party shall sign duplicate copies of each of such statement of affairs, and shall retain one of them for his own use; and another copy thereof shall be written in one of the partnership books, and likewise signed by each of them; such accounts shall not again be opened, unless some manifest error shall be discovered in either of them, within three months thereafter, and then so far only as respects the correcting of such error; and every such statement of affairs shall, in all other respects, be conclusive evidence between and binding on said parties.

8. That at the termination or expiration of the said partnership, by death or otherwise, a valuation and similar account of the stock, effects and capital, and good will, if any, of the said firm, shall be taken, stated, copied and signed in like manner and become equally conclusive; and the balance of such account then found to exist shall belong to the said parties in equal moieties and be realized and divided accordingly, and thereupon they shall execute mutual releases.

9. That all disputes and differences, if any, which shall arise between the said parties, shall be referred to and decided by two indifferent, competent persons in or well acquainted with the wholesale grocery business, one to be chosen by either party, or by an umpire to be chosen by the referees in the usual course in such or similar cases; and their or his decision shall, in all respects, be final and conclusive on both the said parties, and shall be given in writing within 15 days next after such submission or within such further time, not exceeding 30 days, as they or he shall require.

10. That either party may terminate the partnership hereby created on breach of this agreement by the other of them, on giving unto the other of them six calendar months' notice thereof in writing.

Witness our hands and seal this fourth day of August, 19—.

(seal) John Doe
JOHN DOE

(seal) Harry Smith
HARRY SMITH

Richard Roe
WITNESS

FORM 45

MUTUAL RELEASE OF ALL CLAIMS BETWEEN A PARTNERSHIP
FIRM AND AN INDIVIDUAL

This agreement, made on the 1 day of *June*, 19—, between *John Doe* and *Richard Roe*, merchants and co-partners, of the one part, and *Thomas Brown*, of the other part, witnesseth:

That the said co-partners do, and each of them doth hereby, release the said *Thomas Brown*, his heirs, executors, administrators, assigns, and his and their estate and effects; and the said *Thomas Brown* doth hereby release the said co-partners, and each of them, and the heirs, executors, administrators and assigns, and estates and effects of them, and of each of them, from all sums of money, accounts, actions, proceedings, claims and demands whatsoever, for or by reason or in respect of any act, cause, matter or thing whatsoever, up to the day of the date of these presents.

JOHN DOE

RICHARD ROE

THOMAS BROWN

CHAPTER XII

Corporations

THE THIRD AND final basic type of business organization is the corporation.

In the preceding chapter, we saw that a partnership entailed a division of profits and losses, each partner being personally liable for the firm's debts and obligations. It was to escape this onerous burden of liability that the corporation was devised. For, unlike a partnership, liability of shareholders in a corporation is limited merely to the amount of their subscriptions.

A corporation, moreover, has a personality distinct from its stockholders, having rights and duties apart from its members. A corporation, for example, may own an office building but the individual members have no rights therein. Again, a corporation may owe money but the shareholders are under no obligation to pay the debt.

In a partnership, you will recall, the firm is dissolved upon the death of any of its members. A corporation, on the other hand, enjoys perpetual succession and may continue in existence long after the death of the original incorporators. It is this fact of perpetual succession which distinguishes a corporation from all other types of business organization, giving it the considerable advantage it enjoys. Increasingly, the corporation has become the form in which business is organized. It is to this subject that we now turn our attention.

CORPORATIONS

1. *Question:* What is a corporation?

Answer: A corporation is a body, consisting of one or more natural persons, established by law, usually for some specific purpose, continued by a succession of members.

2. *Q.* What are some of the characteristics of a corporation?

- A.*
1. To have continuous succession, without being subject to dissolution by the death, withdrawal or legal disability of any of its individual members.
 2. To take and grant property and contract obligations, within the limits of its charter.
 3. To sue and be sued in its corporate name, in the same manner as an individual.
 4. To receive grants of privileges and immunities.
 5. Exemption of its members from personal liability for the debts of the corporation beyond the amount of their respective shares.
 6. To buy and sell real estate.
 7. Power to use a common seal.
 8. Power to make by-laws.
 9. Power to transfer membership in the corporation without the consent of the other members.

3. *Q.* What are the advantages in forming a corporation?

- A.* One of the most important advantages is that liability of shareholders is limited to the amount of their subscriptions. Once the shareholder has paid the par value of his stock, he is no longer liable either to the corporation itself or to creditors of the corporation. In a partnership, the liability is personal and unlimited. Creditors, for example, may, out of the assets of any single partner, collect their judgments, something which cannot occur in a corporation. Another advantage is that members of a corporation are not liable for the unauthorized acts of their associates. If anyone is liable, it is the corporation itself. Again, the corporate form has a permanency afforded by no other type of business organization. When a partner or the owner of a business dies, a reorganization is necessary if the business is to continue. The death of any officer or member does not dissolve the corporation, however. Finally, the formation of a corporation often is a greater

inducement than a partnership for raising capital and borrowing money. In this way, corporation shares can be more readily sold than shares in a similar but unincorporated business.

4. Q. Are there any reasons for not incorporating?

A. The main one is that a corporation is burdened by excessive taxation and franchise licenses to carry on the corporate business.

5. Q. What is an eleemosynary corporation?

A. Such a corporation is formed to distribute the bounty of the founder in such manner as he has directed. It includes hospitals for the relief of the poor and the weak, colleges for the promotion of learning, and the support of persons engaged in literary pursuits. It is generally synonymous with a charitable organization.

6. Q. What is a corporation sole?

A. It is a corporation which, by law, consists of but one member at any one time—as a bishop in England, for example.

7. Q. What is a foreign corporation?

A. This is a corporation created by legislation other than the one in which its right to do business or own property is being considered. For example, a corporation created under the law of New York is a foreign corporation in Maryland.

8. Q. What is a non-profit corporation?

A. This is a corporation having no capital stock and not being operated for financial profit. Lodges, pleasure clubs, church organizations, etc., are examples.

9. Q. Are non-profit or charitable corporations liable for the negligence of their employees?

A. No, not when the person suing is a beneficiary of the charity. A charitable corporation is generally held liable to strangers for the negligence of its employees within the scope of their employment.

10. Q. What should be considered in determining the state of incorporation?

A. In general, a corporation should be organized in the state in which its principal business is to be conducted, unless certain advantages and privileges are needed which can be

acquired only under the laws of another state. Some of the most important matters to be considered are:

1. Fees and taxes.
2. Requirements as to the issue of shares.
3. Convenience of operation, such as requirements as to qualifications and residence of directors, etc.
4. Ease of making corporate changes.
5. Limitations on the power of corporations to declare dividends and the purchase of its own shares and shares of other corporations.
6. Liabilities imposed by statute on directors and shareholders for debts of the corporation, etc.
7. Right to remove cases to the federal courts.

11. Q. How is an ordinary business corporation organized?

- A.
1. By having a lawyer draft the Articles of Incorporation.
 2. By having the corporation papers signed by the requisite number of incorporators and the acknowledgment of their signatures before a Notary Public.
 3. By filing or recording the Articles or Certificate with the Secretary of State and payment of the organization fees.
 4. By filing or recording a certified copy of the Articles or Certificate with the county clerk in which the principal office is located.
 5. By electing directors and holding an organization meeting by the shareholders and directors.
 6. By procuring a permit or license to do business.
 7. By complying with the Federal Securities Act.

12. Q. What takes place at the first corporate meeting?

- A. Generally, stock subscribers come together and elect the Board of Directors. By-laws are adopted or a committee is appointed to draw them up. After their election, the directors elect officers of the corporation and perform such other business as may be properly presented, such as propositions to exchange property or services for stock.

13. Q. What are the by-laws of a corporation?

- A. These are rules passed for the internal government of the corporation. They are alterable at its pleasure and are binding on the stockholders so long as they are regularly

enacted. They must not be contrary to the law or the charter of the corporation, or against public policy.

14. *Q.* With what do by-laws deal?

A. They are usually concerned with the duties and qualifications of directors and officers; terms of office; bonds of officers; dates of regular meetings; and how special meetings may be called.

15. *Q.* Who determines the by-laws of a corporation?

A. Usually the stockholders, unless, by statute, power is delegated to the directors.

16. *Q.* What should the Articles or Certificate of Incorporation contain?

- A.*
1. The name of the corporation, which must not be in conflict with an existing name.
 2. The purposes for which it is formed.
 3. The authorized capital structure, i.e., the number of shares and whether or not they shall have a par value, the different classes of shares, common or preferred, and the preferences and restrictions thereof.
 4. The principal place of business or office.
 5. The period of time for which the corporation is organized.
 6. The number of directors, usually not less than three, with their names and addresses.
 7. The names and addresses of the incorporators.
 8. The amount of subscribed and paid-in capital with which the corporation proposes to do business.
 9. The amount of indebtedness authorized, and limitation, if any, of stockholder's liability.
 10. The execution and acknowledgment.

17. *Q.* What is the charter of a corporation?

A. A charter is the contract between the state and the corporation and defines its powers. A corporation has only those powers expressly contained in its charter, as well as those reasonably necessary to carry them out.

18. *Q.* What should be contained in a corporate charter?

- A.*
1. The name of the proposed corporation.
 2. The objects of the corporation.

3. The amount of capital stock.
 4. The number and amount of shares.
 5. The classes of stock.
 6. The duration of life of the corporation.
 7. The location of the principal office.
19. Q. Who issues the corporate charter?
A. The state.
20. Q. A corporate charter is granted by the State of South Carolina. The incorporators, who are authorized to act as directors until others shall be elected, assemble in Baltimore, pass resolutions of acceptance and perform other acts necessary to organize the corporation. Has the corporation legal existence?
A. No. A corporation can have no legal existence outside the boundaries of the state by which it is created. To be effective, acceptance of the charter and organization under it must take place within the State of South Carolina. Since they took place in Maryland, the corporate proceedings are void.
21. Q. Under a charter granted by the State of Maine, the incorporators meet in New York, where they organize and accept the charter, electing officers and directors. The directors then meet in New York and authorize the president and secretary to execute a mortgage on the corporate property, which is done. Is this a good mortgage?
A. No. The action of the incorporators in meeting and electing officers is a corporate act which could not take place outside the state of incorporation. Hence, the directors being illegally chosen, the mortgage is void.
22. Q. A state law requires, as a preliminary to incorporation, that articles be filed with the Clerk of the Court of Appeals and a duplicate with the Clerk of the judicial district. The duplicate is not filed as required. Nevertheless, the business functions under the corporate name. Creditors of the corporation file suit against it. Can they recover against the corporation?
A. No. Since the corporation lacked a charter and failed to comply with the statutory requirements, no corporation

legally existed. Hence, the indebtedness is a personal one, not a corporate obligation.

23. Q. A subscriber to stock in a corporation to be formed takes an active part in its organization, as well as in its management after organization. When the corporation files suit against him for his unpaid subscription, he defends on the ground that the corporation was not legally organized. Is this a good defense?

A. No. A person who undertakes to form a corporation, later participating in its management, cannot dispute the existence of the corporation, nor can he avoid liability on his stock subscription in the pretended corporation when sued thereon, either by it or its creditors.

24. Q. A state law requires that the charter give the names of the incorporators. A charter is procured, however, which fails to provide such information. Has a valid corporation been formed?

A. Yes. A corporation, defectively organized, may still have progressed to a point to give the company sufficient legal standing, as a corporate body, for it to transact business and incur liabilities. Compliance with the law has gone far enough, in this example, to enable the company to function as a corporation. Its members, therefore, would not personally be liable, only the corporation itself.

25. Q. Jackson contracts with an association of persons, becoming their creditor. He does so without any knowledge that they claim to be a corporation instead of partners, and there is nothing to put him on notice. As a matter of fact, the group of persons had organized themselves defectively as a corporation. Jackson now seeks to hold them as partners, there being no corporate assets. May he do so?

A. Yes. Jackson may sue the members as partners, showing that they failed to comply with the law under which they claim corporate existence.

26. Q. May a corporation adopt any name it pleases?

A. Yes, as long as its name does not conflict with that of an existing concern. A corporation adopting a name already in use, for the purpose of attracting the other's business, may be restrained by injunction or be liable in damages.

27. Q. How is membership acquired in a corporation?

A. In non-stock corporations membership is regulated by the charter and by-laws. Membership in stock corporations is determined by the ownership of one or more shares of the capital stock secured either (1) by subscription to the capital stock, before or after incorporation, (2) by purchase from the corporation, (3) by transfer from the owner.

28. Q. What books should a corporation keep?

A. 1. Books which are regularly kept in any business.
2. Special corporate books which include the *minute book*, containing the minutes of the corporation, the *stock certificate book*, consisting of a number of blank stock certificates in the form authorized by the directors, numbered consecutively, attached to "stubs" containing corresponding serial numbers. When required, these certificates are detached from the stubs and filled in with the stockholder's name and the number of shares it represents, the stub being a record of the transaction. The *stock ledger*, showing the status of each shareholder in relation to the company. It contains the name of each recorded stockholder, alphabetically arranged, his address, the number of shares owned by him, the date and source of the transaction, the date of the disposition of any shares and to whom disposed, and how much stock remains in his credit; the *transfer book*, consisting of a series of blank transfer forms to be filled out and signed by the transferor or his agent; a *corporate calendar*, kept by the secretary, covering the entire year and indicating to him the days on which notices are to be sent, meetings held, taxes payable, when reports to state officers are due, etc.

29. Q. Has a stockholder a right to examine books of the corporation?

A. Yes. A stockholder has a right to inspect the books and papers of a corporation, either personally or by an agent, provided he does so for a proper purpose and at a proper time. Thus, a stockholder showing a prima facie case of fraud, and whose purpose is to obtain information to remedy the fraud, is entitled to inspect corporate books and papers.

A stockholder has no right of inspection, however, where his purpose in making the examination is improper, or hostile to the interests of the corporation, or merely frivolous.

30. *Q.* What is meant by the capital stock of a corporation?
A. This is the amount of money or property subscribed and paid in by the shareholders or authorized to be so paid in. It always remains the same, unless changed by law. The capital stock of a corporation does not necessarily indicate the value of the property of the company.
31. *Q.* Of what does the capital of a corporation consist?
A. The capital of a corporation consists of its funds, securities, credits and property of any kind, owned by the corporation.
32. *Q.* What is authorized capital stock?
A. This is the amount of stock a corporation is authorized to issue under its charter. The issued stock is that actually issued within the authorized limit.
33. *Q.* What does a share of stock represent?
A. A share of stock is the right to partake in the surplus profits of a corporation; and, upon the dissolution of the corporation, to partake of the fund representing the capital stock as is not liable for the debts of the corporation.
34. *Q.* What is a stock certificate?
A. It is a written acknowledgment by the corporation of the interest of the holder in its property and franchises.
35. *Q.* What is meant by a stock subscription?
A. A subscription to the stock of an existing corporation, when accepted, is a contract between the subscriber and the corporation. It is subject to the rules governing other kinds of contracts.
36. *Q.* What is the usual method of subscribing to stock in a corporation not yet formed?
A. Generally, the procedure is for the parties to sign an agreement to form the corporation and take stock in it when organized.
37. *Q.* A railroad company is organized under a law which appoints commissioners to open books and receive stock sub-

scriptions. Jackson subscribes to some stock, his name being properly recorded in the books. Shortly afterwards, having changed his mind, Jackson attempts to withdraw his subscription. May he do so?

A. No. Jackson's subscription is an offer on his part to purchase stock on the terms set forth by the corporation. When that offer is accepted by the corporation, in this case the railroad company, a binding contract results, and neither party may then withdraw from the agreement. The corporation's acceptance is indicated by having Jackson's subscription recorded in its books.

38. Q. A subscription to stock in a railroad company provides that one-fourth shall be paid when the road is completed to a certain county line, the remainder to be paid in four equal monthly installments, provided the company establishes a depot on said road at a certain point. The road is completed to the specified county line, but there is no erection of the depot. Because of this, the subscriber seeks to cancel his subscription. May he do so?

A. No. The completion of the road to the specified county line is a condition precedent to any liability on the subscription, being made so by the subscription agreement. The erection of the depot is an independent stipulation, not a condition precedent to liability on the subscription. Whether a particular stipulation is a condition precedent, or merely an independent stipulation, is a question of intention, courts taking into consideration not only the words of the particular clause, but also the language of the entire contract, the situation of the parties, the nature of the act required and the whole subject matter to which it relates.

39. Q. What is treasury stock?

A. This is issued stock re-acquired by the corporation and held in its treasury for possible reissuance.

40. Q. What is the difference between common and preferred stock?

A. Preferred stock, usually, entitles the holder to preference over the holder of common stock, both in the participation of earnings and in the division of assets. Being stockholders,

the owners of preferred shares are subject to all the liabilities of stockholders, including liability for corporate debts.

41. *Q.* What is "participating" preferred stock?

A. Such stock not only entitles the holder to the preferences described in Question 40, but also participates with the common stock in the earnings above the per cent agreed upon. For example, if there is a seven per cent participating preferred stock, it must be paid seven per cent before anything is paid on the common stock.

42. *Q.* What is meant by "watered" stock?

A. This is stock issued gratuitously, or under an agreement by which the holder is to pay less than its par value, either in money, property or services. Watered stock issued by a corporation is binding on it, and also binds stockholders who participate or acquiesce in the transaction. Dissenting stockholders, however, may sue to enjoin or cancel the issue of such stock. Again, if the watered stock is original stock, issued on subscription, the transaction is a fraud on creditors of the corporation, who deal with it on the faith of the stock being fully paid. Hence, if the corporation becomes insolvent, the original holders of such stock, and purchasers with notice, may be held liable for its par value to pay such creditors.

43. *Q.* It is agreed between a corporation and all its stockholders that only twenty-five per cent should be paid on their shares. Subsequently, the corporation seeks to collect the full value of its stock. May it do so?

A. No. This is a perfectly valid agreement; it is as binding as between the company and its stockholders as if it were expressly authorized by charter. No suit, therefore, can be maintained by the corporation to collect the unpaid stock, since the shares were issued as fully paid and on a fair understanding.

44. *Q.* What is a "blue sky" law?

A. Such laws are designed to prevent the sale of stock, the only assets of which are "blue sky." They provide for the registration of the proposed stock with the proper body, with the provision that the securities are not to be issued until so

registered and passed upon, and a license to sell is granted by the Federal Securities Commission. The effect of such laws, where properly enforced, is to regulate the sale of speculative securities, though it does not actually forbid them.

45. Q. What does the Federal Securities Law provide?

A. This act, passed by Congress in 1933, provides for full disclosure of facts concerning securities offered in interstate commerce or through the mails. Under the act, a registration must be filed with the Securities and Exchange Commission in Washington by the registrant, including financial statements, pertinent exhibits and a copy of the "prospectus." The law prescribes certain penalties for failure to file a full and honest report.

46. Q. What is a dividend?

A. A dividend is a fund which the corporation has set apart from its profits to be divided among its members.

47. Q. Who declares dividends?

A. The directors of a corporation. They have large discretionary powers, and are therefore not accountable unless they abuse this discretion and act fraudulently, oppressively or unreasonably.

48. Q. Who are entitled to dividends?

A. Stockholders of record at the time the dividend is declared, no matter when the profits were earned, and without regard to the length of time particular members may have been stockholders.

49. Q. May a stockholder bring suit against the corporation to compel it to declare dividends where there is a surplus?

A. No. He can only bring suit after the dividend has been declared, for, until that time, no dividend is due. However, should the directors fraudulently fail to declare a dividend or act in obvious bad faith, stockholders may go into a court of equity to compel the directors to declare a dividend. A stockholder may obtain an injunction, if he can secure no other relief, restraining or preventing the directors or other officers of the corporation from paying out money on purposes thought to be illegal.

50. Q. May a dividend be declared where there are no profits or surplus?
A. No, to do so is improper.
51. Q. An insolvent corporation declares a dividend. May creditors of the corporation recover such dividend?
A. Yes. Creditors may recover from each stockholder who has been paid a dividend, such dividend being considered a fraud on creditors of the corporation.
52. Q. A dividend is declared in June, payable in August. In July, a stockholder transfers his stock to Bill. Is Bill entitled to the dividend?
A. No.
53. Q. A corporation declares a dividend, paying it to those stockholders who are registered as such on the books of the corporation. Jones, a former stockholder, has sold and assigned his stock to Collins before the declaration of the dividend, but the latter has not yet had the stock transferred to his name. As between Jones and Collins, who is entitled to the dividend?
A. Collins. The rule is that a dividend is payable to the substantial owner of the shares at the time the dividend is declared.
54. Q. What constitutes a legal meeting of stockholders, so as to render the acts and vote of the majority binding?
A. 1. The meeting must be called by one having authority. In the absence of provision to the contrary, such authority exists in the directors or managing agents.
2. Notice of time and place of the meeting must be given to each stockholder, unless the time and place are definitely fixed by statute, charter, by-laws or usage. But if all the stockholders are present, in person or by proxy, notice is waived.
3. If a special meeting is called, notice of the business to be transacted must be given.
4. The meeting must be held at a reasonable time and place.
5. It must be regularly and properly conducted.

6. If there is a provision that a certain number of stockholders shall constitute a quorum for the transaction of business, a less number cannot act. In the absence of express provision, no particular number is necessary to constitute a quorum.
55. Q. May a stockholder be prevented from attending a stockholders' meeting?
A. No.
56. Q. Who are entitled to vote?
A. Those who appear on the books of the corporation as its stockholders.
57. Q. If a stockholder cannot attend a meeting, does he lose his right to vote?
A. No. He may vote by "proxy"—that is, by sending someone to attend the meeting in his place and to vote in his stead.
58. Q. Do trustees, executors and administrators have the right to vote?
A. Yes. They may vote the stock they hold in trust.
59. Q. In general, what are the powers of majority stockholders?
A. As a rule, each shareholder is bound by all acts and proceedings, within the scope of the powers and authority conferred by the charter, which are adopted by a vote of the majority of the corporation, duly taken in accordance with the law. However, if the charter grants the board of directors, or other agents with power to manage the corporate affairs, the power is exclusive and cannot be controlled or interfered with by the stockholders, their remedy being to elect or appoint new directors or agents. At the same time, even the majority cannot bind the minority by acts *beyond* the corporation's authority, nor defeat or impair contract rights between the corporation and individual stockholders, nor act fraudulently or oppressively, as against the minority.
60. Q. In violation of its charter, a majority of stockholders in a corporation sell, at a loss, several buildings belonging to the corporation. Is such a transaction binding on the corporation?
A. No. Even a majority of stockholders have no power to bind the minority by any act or proceeding not within the powers

conferred upon the corporation by its charter. In this case, a stockholder, on behalf of himself and other stockholders, may bring suit against the corporation in a court of equity. As a basis for the suit it must be shown (1) that some action, or threatened action, of the board of directors is beyond the authority conferred by the charter (as in the above example); or (2) that the transaction is so fraudulent as will result in serious injury to the corporation or to the interests of the other stockholders; or (3) that the board of directors, or a majority of them, are acting in their own interests, in a way destructive of the corporation itself, or of the other stockholders; or (4) that the majority of the stockholders themselves are oppressively and illegally pursuing a course in violation of the rights of the other shareholders. Finally, it must appear that the aggrieved stockholder or stockholders have exhausted all means, within the corporation itself, to obtain redress of alleged grievances.

61. Q. May stock be sold, mortgaged or pledged as security?
A. Yes. One who buys stock usually stands in the same position as the one from whom he bought it.
62. Q. How is stock transferred?
A. Usually by indorsement and delivery of the stock certificate, its surrender at the office of the corporation, or to the transfer agent for a new certificate and the enrollment of the transferee (the person to whom the stock has been transferred) upon the books of the corporation as a stockholder.
63. Q. Stockholders of a corporation agree among themselves not to sell, pledge or transfer their shares. Subsequently, a shareholder, in violation of this agreement, does sell his stock to a stranger. Is the transaction legal?
A. Yes. An agreement between stockholders not to sell, pledge or transfer their shares is in unreasonable restraint of trade and therefore void.
64. Q. May a stockholder sell or transfer his shares to an infant—that is, one under legal age?
A. No, nor can he sell or transfer his stock to any person who is incapable in law of assuming liability with respect to shares, such as a lunatic, for example.

65. Q. Does a transferee of stock have a right to vote at stockholders' meetings before he has had his transfer registered?

A. No. He also takes the risk, as against the corporation, of payment of the dividend to the person who appears as owner on the books of the corporation. Of course, the transferee would be entitled to recover dividends from the person so receiving them.

66. Q. What general powers do directors have?

A. Where general management of a corporation is entrusted to a board of directors or other officers, they have the power to bind the corporation by any act or contract within the powers conferred upon it. However, they cannot effect any great or radical change in organization without the assent of the stockholders, unless such power is expressly conferred. The board may delegate authority to a committee or to third persons to do acts for the company. They cannot delegate the exercise of a discretion vested in them.

67. Q. May a director vote upon any resolution in which he is personally interested?

A. No.

68. Q. May a director profit by his relationship to the corporation?

A. No. A director occupies a position of trust. He cannot use his position to make secret profits without a full and fair disclosure of the facts.

69. Q. Jones, a tool manufacturer, sells some tools to a corporation of which he is a director, procuring the contract through his own vote. May the corporation cancel the contract?

A. Yes. If a director, by his own vote, procures a contract with himself in which his own interests are opposed to the corporation, the contract may be set aside by the corporation or its stockholders. The law does not permit a director to place himself in a position where he may betray the interests of the corporation to his own advantage.

70. Q. Are directors and other officers of a corporation personally liable for losses sustained by the corporation?

A. Ordinarily, directors are not personally liable for accidents, thefts, etc. where they have not been negligent, nor for mere mistakes or errors of judgment where they act in good

faith and with ordinary care and diligence. However, they are personally liable if they wilfully abuse their trust—as, by exceeding their authority or the powers of the corporation, or by misappropriating corporate funds. They are personally liable, too, when they are guilty of gross negligence and inattention to the duties of their office.

71. Q. How may a director be removed?

A. By the stockholders of the corporation. He cannot be removed by his co-directors.

72. Q. How may an officer of a corporation be removed?

A. Normally, a corporation has a right to remove an officer or agent, where there is a contract for a fixed term, only where he violates his contract or is incompetent. But it can, at any time, revoke the authority of an agent, although it may render itself liable for breach of contract by so doing. An agent or officer who is appointed by vote of the stockholders, or whose term of office is fixed by charter, cannot be removed, nor can his authority be revoked, by directors.

73. Q. Jones, an investment broker, organizes and controls a number of corporations. He persuades his clients to invest in the worthless securities of these “dummy” corporations. A customer whom he has bilked now seeks to hold Jones personally liable. Jones defends on the ground that the corporation should be sued, not Jones. Is he right?

A. No. There is a sharp difference between the legal rights and responsibilities of a corporation and the legal rights and responsibilities of its members. Contracts made by an officer of a corporation, for example, bind the corporation, not the officer individually. Corporate debts are not the debts of its members but the debts of the corporation. However, when the corporate form is used as a cloak to evade responsibility, the court will ignore the corporate form and fix responsibility as substantial justice requires. Jones, therefore, would be liable individually.

74. Q. A corporation issues a stock certificate to Jones, who claims that it is fully paid for. Jones sells it to a friend who has no idea that actually the stock is not fully paid for. Is the friend liable to creditors of the corporation?

A. No, since the friend lacked knowledge.

75. *Q.* Jones subscribes for stock of the par value of \$1,000. He has paid but \$200 on it when the corporation becomes insolvent. What can the creditors of the corporation collect from Jones?
- A.* \$800. The indebtedness of Jones is a corporate asset from which the corporation may meet its obligations.
76. *Q.* The president of a banking corporation enters into a contract with cotton brokers for the purchase of cotton on the stock exchange. The brokers buy the cotton for the bank president who, after due notice, refuses to receive the cotton. No money has passed between the parties. Is the bank liable?
- A.* No. The act of the president in contracting for the purchase of cotton is beyond the usual scope of banking business; the bank, therefore, would not be liable. Had the cotton been delivered, however, the bank would be liable.
77. *Q.* Brown sues Smith for personal injuries resulting from a fall on a defective stairway in a corporation-owned building. Smith insists that the corporation be sued, not himself. Brown contends, however, that the corporation holds title to the real estate merely as a subterfuge to relieve Smith, the real owner, from liability. The capital stock is \$1,000, consisting of one hundred shares of a par value of \$10 each, held by Smith and the members of his family. Who is liable, Smith or the corporation?
- A.* The corporation. Organizing a corporation for the purpose of escaping general liability is perfectly lawful. Hence, Smith is not liable; the corporation is.
78. *Q.* Four men contract to organize a corporation. It is agreed that Millman shall receive fifty shares of stock for installing a bookkeeping system for the proposed corporation. The next day, the corporation is organized, all its stock being issued to the four organizers. After this, Millman performs the services indicated but the corporation's officers refuse to deliver the promised shares of stock. Can they be compelled to do so?
- A.* Yes. A corporation is not usually liable for services and expenses of its promoters in organization. In the present case,

however, the evidence shows that the corporation adopted the contract, made by its organizers with Millman, and therefore is bound by it.

79. Q. A promoter promises to pay Jones for services rendered prior to incorporation. After the corporation is formed, Jones sues the corporation rather than the promoter, on the ground that the corporation benefited by his services. May Jones recover from the corporation?

A. No. Prior to incorporation, a promoter is personally liable upon contracts made by him, unless he is acting as agent for the shareholders—in which case the shareholders would be liable. The promoter cannot represent the corporation or bind it, since the corporation is still non-existent. When the corporation comes into legal existence it may ratify the contract—in which case the corporation will be bound.

80. Q. A corporation contracts with a union to employ only union men and maintain a closed shop. In order to continue the same business with an open shop, the corporation discharges its men, discontinues its business and dissolves. The former shareholders then organize another corporation, carrying on business with the same shareholders, officers, etc., but employing non-union men. The union seeks to prevent the new corporation from violating the original agreement for a closed shop. May it do so?

A. Yes. Most states would regard the formation of the second corporation as a mere subterfuge to evade its contracted obligations.

81. Q. A railroad company buys a large office building which it then rents to tenants. Is this a proper exercise of its corporate powers?

A. Yes. Every corporation has a right to own as much property as is necessary to carry out its charter powers. In this case, it could be argued that the railroad company had an eye toward expansion. It could, therefore, erect a building to provide for such growth, although it was not then necessary.

82. Q. Does a corporation have the power to buy in its own shares?

A. Yes, when no harm is done to its creditors.

83. Q. May a corporation insure the lives of its officers?
A. Yes.
84. *Q. Does a corporation have power to sell its assets?
A. Yes, if there is no dissent among the stockholders.
85. Q. May a stockholder object to a proposed merger or consolidation?
A. Courts generally refuse to allow a small minority to block a sale of assets, especially when the sale is to the interest of the stockholders. A dissenting stockholder, however, has a right to have his shares appraised in the manner provided by statute, and to receive payment therefor.
86. Q. Under what circumstances may a receiver for a corporation be appointed?
A. Usually, a receiver is appointed to take charge of the assets of a business where there is mismanagement or internal dissension in the corporation; where there is insolvency, or where the corporation is unable to pay its debts.
87. Q. The president of a corporation signs a contract for advertising space in a magazine, for one year, at \$1,000 per month. The president has not been authorized by his Board of Directors to sign the contract, nor is it signed by the general manager or secretary of the corporation. When the corporation refuses to pay the bill it is sued by the magazine. Who will win?
A. The corporation. Whether a president or any other corporate officer has authority to do particular acts depends upon the powers conferred upon him, either by the charter, the by-laws, or by the directors. In the absence of such authority, the president has no intrinsic power to bind the corporation.
88. Q. Directors of a bank pass a resolution requiring that books should be opened, under the direction of Atwell and Brown, for further subscription to the stock of the bank. It is agreed that \$5 should be required on each share at the time of subscribing. Jones agrees to buy certain shares, arranging with Atwell and Brown that they take a note which Jones holds, then collect it, applying the proceeds to the payment of his subscription. Learning of the trans-

action, the bank refuses to issue Atwell and Brown certificates of stock to the amount of Jones' subscription. Can the bank be legally compelled to do so?

A. No. Atwell and Brown exceeded the authority conferred upon them by the resolution. Having no authority to take anything but money for the stock, their act does not bind the bank, since it neither ratified nor affirmed the unauthorized transaction.

89. Q. A farmer and his wife subscribe for stock, mortgaging their farm on representations that the stock will prove a lucrative investment. The stock goes down in value. The farmer and his wife now seek to repudiate the contract by returning the stock and obtaining the purchase price. Can they do so?

A. No. Opinions as to the value of stock are not such representations as are ordinarily a basis for repudiation of a contract.

90. Q. Directors of a corporation issue a prospectus stating that the company has a franchise to use steam power instead of horses on its right of way. Brown, relying on the representations, applies for and is allotted shares in the company. The corporation builds street railways, but, not obtaining the right to use steam power, it becomes insolvent. When Brown files suit against the corporation, it defends on the ground that the directors believed the truth of the assertion, although now they know it was false. Is this a good defense?

A. Yes. Unless it is proved that the false statements were made knowingly, or without belief in their truth, or with reckless disregard as to their truth or falsity, the corporation would not be bound. It is sufficient if the directors were motivated by the honest belief that their representations were true.

91. Q. Jones buys certain stock on a secret condition, agreed to by the promoter, that Jones will not be bound unless certain other parties subscribe. When the other parties fail to subscribe, Jones seeks to cancel his contract, alleging the secret condition which the promoter does not deny. May Jones cancel his agreement?

A. No. The capital stock of a corporation represents a fund

paid in by its subscribers and stockholders so that it may conduct its business and pay its obligations. In the above example, Jones is imposing a condition which, if enforced, may deplete the fund to which creditors have a right to look for the payment of their debts. Hence, such secret conditions are void, and the subscription may be enforced against Jones.

92. Q. Do directors have power to dissolve a corporation?

A. No. It must be done by vote of the stockholders.

93. Q. How is a corporation dissolved?

- A. 1. If of limited duration, by the expiration of the term of its existence, fixed by charter or general law.
2. By the loss of all its members, or of an integral part of the corporation, by death or otherwise, if the charter or act of incorporation provides no way by which such loss may be supplied.
3. By the surrender of its corporate franchise to, and the acceptance by, the state authority.
4. By the forfeiture of its charter through the neglect of duties imposed or abuse of the privileges conferred by it, the forfeiture being enforced by proper legal action.

FORM 46

AGREEMENT TO ORGANIZE A CORPORATION

Whereas, the party of the first part has made certain discoveries relating to the manufacture of synthetic rubber, apparently of material commercial value, and has associated the party of the second part with him to further the marketing thereof, and the party of the third part is willing to form and finance a company to manufacture and market the same, if he finds to his satisfaction, after investigation, that said discoveries are valuable commercially: Now, therefore, this agreement witnesseth that in consideration of these presents and of one dollar paid by each of the parties hereto to each of the others, receipt of which is hereby acknowledged, the parties hereto jointly and severally covenant and agree as follows:

1. The party of the third part within 30 days from date is to investigate the commercial value of said discoveries, without expense to the other parties hereto, and if satisfactory is so to notify said other parties within 90 days, and to forthwith incorporate a company to manufacture and sell the

products made pursuant to said discoveries, with which company the parties hereto shall be associated as herein indicated.

2. The capital stock of said company is to be issued for said discoveries, and shall be \$1,000,000, of 100,000 shares of the par value of \$10.00 each, of which the party of the first part is to receive 50,000 shares, the party of the second part 45,000 shares, and the party of the third part 5,000 shares for which he is to pay the company \$50,000 as it is needed by it for capital and in installing its plant to supply its business.

3. The said company shall have 6 directors.

4. The said company shall, immediately on its organization, pay said first party \$50,000 for his said discoveries which shall be written out in detail and placed in a safety deposit box in the name of the company.

5. The said company shall engage the said party of the first part as consulting engineer and chemist at a salary of \$10,000 for the first year, payable in monthly installments, which salary shall be annually increased, if the business warrants, at the rate of \$5,000 a year, until same amounts to \$35,000 yearly.

6. The said party of the second part shall be the president of the company at a salary of \$10,000 yearly, to be increased as the business of the company warrants.

7. The said party of the third part shall be treasurer of the company at a salary of \$7,500 per year.

8. The said parties of the first, second and third parts hereby accept said positions respectively on the basis herein expressed.

9. All obligations hereunder shall terminate 60 days from date, unless favorable action be taken as above indicated.

PARTY OF THE FIRST PART

PARTY OF THE SECOND PART

PARTY OF THE THIRD PART

FORM 47

NOTICE OF FIRST MEETING

State of *Maryland*)
) ss.
 City of *Baltimore*)

You are hereby notified that the first meeting of the subscribers and incorporators to the articles of incorporation and an agreement to associate

themselves for the purpose of forming a corporation to be known by the name of *Johnson, Inc.*, dated on the 1 day of *October, 19—*, for the purpose of organizing said corporation by the election of directors, the adoption of by-laws, and the transaction of such other business as may properly come before the meeting, will be held at the office of *John Doe* in the city of *Baltimore*, state of *Maryland*, on the 15 day of *June, 19—*, at 10 o'clock *A.M.* of said day.

SECRETARY

FORM 48

ARTICLES OF INCORPORATION—GENERAL FORM

Note: When organizing a corporation, particular attention should be paid to the statutes in which the proposed corporation is to be organized. The following form is merely suggestive.

We, the undersigned, hereby mutually agree to unite and associate ourselves as a corporation and for such purpose we hereby make, execute and adopt the following articles of incorporation:

Art. 1. The name of this corporation shall be *The Outlet Co., Inc.*

Art. 2. The period of the existence and the duration of the life of this corporation shall be *Perpetual*.

Art. 3. The principal office and place of business of this corporation shall be at the city of *Pocomoke*, in the county of *Worcester*, state of *Maryland*.

Art. 4. The objects and purposes of this corporation shall be *The Sale of Men's Furnishings, Shoes, etc.*

Art. 5. The business and affairs of this corporation shall be managed and controlled by a board of 3 directors, to be elected annually at the annual meeting of the stockholders.

Art. 6. The names and residences of the persons who have been selected as the board of directors to manage the business and affairs of this corporation for the first year are as follows:

Names	Residences
<i>John Doe</i>	<i>Pocomoke City, Md.</i>
<i>Jane Doe</i>	<i>Pocomoke City, Md.</i>
<i>Thomas Doe</i>	<i>Pocomoke City, Md.</i>

Art. 7. The annual meeting of the stockholders for the election of directors and for the transaction of other business shall be held at the office of the corporation on the first Saturday in January, 19—, and on the

first Saturday in January in each year thereafter. The vote in the election for directors shall be by ballot, and the election may be conducted in such manner and form as may be provided by the by-laws. The three directors receiving the highest number of votes shall hold their office for three years and until their successors are elected; the next three directors receiving the next highest number of votes shall hold their office for two years and until their successors are elected; the three directors receiving the lowest number of votes shall hold their office for one year and until their successors are elected. At the first annual meeting thereafter, three directors shall be elected for the term of three years and at each annual election thereafter, three directors shall be elected for the term of three years, the intention being that one-third of such board of directors shall be elected annually.

Art. 8. In all elections for directors each stockholder shall be entitled to one vote for each share of stock owned by him for each director.

(Where the statute permits, the following may be added): In all elections for directors each stockholder shall have the right to vote the number of shares of stock held by him for as many persons as there are directors to be elected; and in casting such vote, he may cumulate his votes and give one candidate as many votes as the number of directors multiplied by the whole number of his shares of stock shall equal; or he may distribute his votes on the same principle among two or more of the candidates for directors. On all matters involving corporate acts transacted in stockholders' meeting, any stockholder may demand a vote according to the ownership of stock.

Art. 9. The capital stock of this corporation shall be \$10,000., which shall be divided into common and preferred stock. Of the common stock there shall be 1,000 shares, of the par value of \$5.00 each; and of the preferred stock there shall be 1,000 shares, of the par value of \$5.00 each. The said dollars of preferred stock shall be entitled to receive dividends at the rate of 7 per cent per annum, payable semi-annually on the first Monday of January and the first Monday of July in each year, out of the earnings of said corporation before any dividends shall be paid upon the said common stock, and such dividends shall be cumulative so that any deficiency in the dividends to be paid on said preferred stock in any year shall be made good out of the earnings of subsequent years before any dividend shall be paid upon the said common stock. And in case the earnings of the corporation shall permit a dividend in excess of said 7 per cent so to be paid semi-annually, then and in any such event the preferred stockholders, after receiving such preferred dividend, shall be entitled to share equally with the holders of the common stock as to any dividend over and above the said preference dividend. And on the final liquidation of this corporation and the distribution of its assets, all arrears of dividends shall be paid to the holders of such preferred stock and the shares of preferred stock shall be paid in full before any payment shall be made to the holders of the common stock;

but when such arrears of dividends and the face value of such preferred stock shall have been paid, the holders thereof shall receive no other or additional payments whatever. The amount of such preferred stock shall not be changed or altered by any increase or reduction in the capital stock of said corporation without the consent in writing of the holders of a majority thereof. The holders of the common stock shall have the management and control of this corporation so long as the business of said corporation is able to pay from its earnings the said preference dividends on such preferred stock and during such time the holders of such preferred stock shall have no voting power. But in case said dividends on said preferred stock shall not be earned and paid for a period of 2 years, then and in that event the holders of preferred stock shall have the same voting power in the elections and in the management and control of said corporation as the common stockholders.

Art. 10. Immediately, upon the election of directors and the adjournment of the stockholders' meetings, or as soon thereafter as convenient, the directors so elected shall meet and organize by electing one of their number president, and one of their number vice-president, and by electing from their number or from the stockholders (or same persons if desired) a secretary and treasurer, each of whom shall perform such duties and powers as generally appertain to such offices and as may be stated or required of them by the by-laws or by the board of directors.

Art. 11. All stockholders must vote in person and can not vote by proxy. And all persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held by them; and all persons whose stock has been pledged shall be entitled to vote the same, unless the transfer of the stock on the books of the corporation shall show that the pledgee is entitled to vote the same, and in all such cases the pledgee only shall have the right to vote such stock. And the holders of any bond or debenture issued or to be issued by this corporation, whether secured by mortgage or otherwise, shall have the same power to vote in respect to the corporate affairs and management to the same extent and in the same manner as stockholders; that is, in determining the number of votes to be cast by each bond or debenture holder, the amount of his bond or bonds shall be divided by the par value of a share of the capital stock and the result will be the number of votes to which he is entitled. In case of default in the payment of either principal or interest of any bond or debenture, any such bond or debenture holder may have the same right of inspection of the corporate books, accounts and records as any stockholder.

Art. 12. This corporation shall have and hold a lien on all stock subscribed to secure the payment of such subscriptions, and no sale or transfer of stock or shares shall avoid such lien; and as against this corporation, no sale or transfer of stock shall be valid and convey title to the shares unless entered upon the books of the corporation as required by the by-laws.

Art. 13. No single person or corporation shall subscribe for, own or hold at any time more than 1,000 shares of the capital stock of this corporation.

Art. 14. The subscriptions for and the ownership of all stock in this corporation are made and taken upon the condition that any holder of stock desiring to sell the same shall first offer his stock to the corporation at his lowest price and the corporation shall have 30 days in which to exercise its option to purchase the same. On its refusal to purchase, the stockholders shall have 60 days to exercise their option to purchase said stock at said price. After the expiration of such time, the stockholder shall be free to make any other sale of his stock.

Art. 15. The greatest amount of indebtedness to which this corporation may at any time subject itself shall not exceed \$15,000.00; or shall not exceed two-thirds of the capital stock actually subscribed.

Art. 16. The private property of the stockholders of this corporation shall not be subject to the corporate debts in any amount or to any extent whatever.

Art. 17. The stock of this corporation shall be nonassessable.

Art. 18. These articles may be changed, altered or amended at any authorized meeting of the stockholders by a vote of the stockholders representing a majority of the stock.

Art. 19. The names and places of residence of the incorporating members, the subscribers hereto, and the number of shares subscribed by each of them and which each agrees to take and pay for, are as follows:

Names	Places of Residence	No. of shares
<i>John Doe</i>	<i>Pocomoke City</i>	500
<i>Jane Doe</i>	<i>Pocomoke City</i>	500
<i>Thomas Doe</i>	<i>Pocomoke City</i>	1,000

In witness whereof we have set down our signatures *this 6th day of April,*
19—.

JANE DOE

JOHN DOE

THOMAS DOE

FORM 49

PROMOTER'S AGREEMENT

This agreement by and between *John Doe, Richard Roe, and Thomas Brown,* parties of the first part, and *Ralph Powers,* party of the second

part, witnesseth, that whereas the said parties of the first part have arranged and agreed among themselves to organize a corporation to be known as the *Pioneer Automobile Company*, with a capital stock of \$75,000, divided into 15,000 shares of the par value of \$5 00 each, the same to be located at the city of *Baltimore, Md.* for the purpose of engaging in the manufacture and sale of automobiles and automobile sundries and supplies; *and*,

Whereas, the said parties of the first part have agreed among themselves to take and pay for 10,000 shares of the said capital stock on the complete organization of said company; *and*,

Whereas, the said party of the second part, having had experience as a promoter, has signified a willingness to secure subscriptions for 400 additional shares of the capital stock of said company.

Now, therefore, it is hereby agreed that the said party of the second part shall within ninety days from the date hereof secure bona fide solvent subscriptions to the capital stock of said proposed corporation, the same to be paid on such terms as the board of directors of said corporation after its incorporation may determine, consistent with the governing statute of the state.

In consideration of the services so to be rendered by the said party of the second part, the said parties of the first part hereby undertake that the said company, on complete organization by its proper officers, shall issue to said party of the second part 3,000 shares of the capital stock of said corporation as full paid, and for which the said party of the second part shall pay no other consideration whatever. On failure or refusal of the said corporation to so issue said shares of stock to said second party, the said parties of the first part hereby agree and bind themselves to pay to said second party the sum of \$15,000 in cash.

On failure of said second party to secure said solvent and bona fide subscriptions within said time this agreement shall be of no force and effect. In case said second party shall procure said subscriptions in said time, then the said parties of the first part agree to sign any proper papers, instruments, articles or certificate necessary to complete the incorporation of said proposed company, and to pay the necessary fees, expenses and charges for the incorporation thereof.

In Witness Whereof, the parties have hereunto set their hands this 10 day of *November, 19—*.

(Signed) _____

PARTY OF FIRST PART

PARTY OF SECOND PART

FORM 50

WAIVER OF NOTICE OF MEETING

State of *Maryland*)
) ss.
 City of *Baltimore*)

We, the undersigned, incorporators of the *Rex* company, a corporation of the state of *Maryland*, do hereby severally waive notice of the time, place and purpose of the first meeting of incorporators of said company, and hereby consent that the same be held at the office of *John Doe* in the city of *Baltimore*, state of *Maryland*, on the *10* day of *November*, 19—, at *10* o'clock *A.M.*; and we do further hereby consent to the transaction of any and all business that may come before the meeting, including the election of directors and the adoption of by-laws.

Dated this *16* day of *October*, 19—.

 INCORPORATOR

 INCORPORATOR

 INCORPORATOR

 INCORPORATOR

FORM 51

GENERAL FORM OF PROXY TO VOTE STOCK

Know all Men by These Presents:

That *John Doe* does hereby constitute and appoint
Richard Brown attorney and agent for *John Doe*, and in *His* name, place
 and stead to vote as proxy at the next election of
 Directors of the *Rex Co., Inc.*, and for inspectors of election, according
 to the number of votes and upon the shares of stock *He* should be entitled
 to vote, if then personally present, and authorize him to act for *Me* and in
My name and stead, at the next meeting for the election of directors as

fully as *I* could act if *I* were present, giving to said *Richard Brown*, agent and attorney, full power of substitution and revocation

This proxy is to continue in force until the 10 day of *Nov*, 19—, unless sooner revoked

JOHN DOE

WITNESS

FORM 52

MINUTES OF FIRST MEETING OF INCORPORATORS

The first meeting of the incorporators and subscribers to the capital stock of the *Rex* company held at the office of *John Brown* in the city of *Baltimore*, upon the 2 day of *August*, 19—, at the hour of 10 o'clock *A M*, pursuant to the agreement and waiver of notice in the articles of corporation (or pursuant to notice).

And the meeting was called to order by *Richard Roe*, and upon his motion and nomination Mr. *Smith* was duly elected chairman of the meeting. On assuming the chair and stating the purpose of the meeting, he called for nominations for secretary, whereupon Mr. *Brown* was selected for that position and immediately assumed the duties thereof.

At the request of the president the roll of the subscribers and corporators was called and the following persons representing the number of shares of stock were reported as present in person:

Names	No. of Shares
<i>John Redding</i>	500
<i>William Walker</i>	500
<i>Chester Lawrence</i>	500
<i>Ralph Black</i>	20
<i>Hugo Small</i>	60

And the following names and number of shares were present by proxy

Names	Name of Proxy	No. of Shares
<i>Stanley Taub</i>	<i>Betty Taub</i>	300
<i>Karl Metzler</i>	<i>Joseph Ellisson</i>	450

The proxies were ordered placed on file.

The chairman then stated that since the execution of the articles of incorporation the following named persons had subscribed to the capital

stock of the corporation and that the same were present and entitled to vote as follows:

Names	No. of Shares
<i>William Taft</i>	75
<i>Henry Louis</i>	125
<i>George Stone</i>	100

Thereupon Mr. *White* (a promoter) reported that the articles of incorporation had been filed in the office of the secretary of state and duplicate certificates had been issued by that officer, one of which had been duly recorded in the office of the clerk or (reporter of deeds), and the other was presented to the meeting, which was thereupon ordered spread.

On motion of *Messrs. Redding, Walker, Black, and Lawrence*, the directors named in the articles of incorporation were recognized as the directors of the company for the first year of its existence, and those named as such were directed to be entered upon the minutes of the meeting.

On motion it was ordered that the meeting proceed to the election of directors; and thereupon the chair appointed Mr. *Black* and Mr. *Small* inspectors of election and they were sworn to discharge their duties as such.

The chair then called for nominations for directors and the following-named gentlemen were placed in nomination, to hold their office for the ensuing year, to wit: Mr. *Redding*, Mr. *Walker* and Mr. *Lawrence*. No further nominations being made, the polls were duly opened and all stockholders present and proxies were permitted to vote. After all had voted, the chair declared the polls closed, and after a count of the ballots, the inspectors reported and presented their certificates showing that the following-named persons had received the number of votes as follows: Mr. *Redding*, 1,080; Mr. *Walker*, 1,080; Mr. *Lawrence*, 1,080; and thereupon the said named persons were declared duly elected directors of the corporation.

It was suggested to the chair that a committee on by-laws had been appointed, and the chair called upon the committee for a report. Thereupon the committee, by its chairman, Mr. *Black*, asked to submit the following report. The by-laws prepared by the committee were thus read, section by section, and after full discussion, the following by-laws were unanimously adopted for the government of the affairs of the company: (Here insert by-laws adopted.)

On motion of Mr. *Small*, the board of directors was authorized to make calls upon the stock subscribed for up to the limit of the par value thereof, payable at such times and place as the board of directors should determine.

On motion of Mr. *Black*, the directors were also authorized to issue stock to all subscribers therefor upon full payment of the same.

Upon motion, the board of directors were also authorized from time

to time, in their discretion, to accept in full- or in part-payment for stock such property as the board may from time to time determine to be necessary in carrying on the business of this company.

On motion it was ordered:

(1) That in compliance with the laws of the state, the regular registered office of the company in this state shall be established and continuously maintained at No. 100 *Doe* street, in the city of *Baltimore*, State of *Maryland*.

(2) That *Mr. Small* be and is hereby appointed the agent of this company in charge of said office, upon whom process against this corporation may be served, and that he be directed and authorized to keep in said office the stock-transfer books, to register transfers therein, and to keep all other books and records of this company which the laws of this state require to keep therein, during the usual office hours of business, and open to the examination of all stockholders and other persons entitled to inspect the same.

(3) That any stockholder shall be entitled to a list of the names and addresses of the stockholders, with a statement of the number of shares held by each, upon payment of such reasonable fee as the board of directors may determine.

(4) That the name of this corporation shall be at all times conspicuously displayed in plain letters on a sign at the entrance of said office.

(5) That the secretary send a copy of the foregoing resolution, duly certified by him under the seal of the corporation, to the said *Mr. Small*, and to file such copies thereof with such officials as the law requires.

SECRETARY

FORM 53

NOTICE TO STOCKHOLDER OF ANNUAL MEETING

Jan. 2, 19—.

Dear Sir: You are hereby notified that the annual meeting of the stockholders of the *Rex* company will be held at the office of the company, room 101 *Randall* Building, 100 *Doe* Street, city of *Baltimore*, at 10 o'clock A.M. on Tuesday, 2 day of *Feb.*, 19—, for the election of directors and for the transaction of such other business as may come before the meeting.

The stock-transfer book of the company will be closed at 5 o'clock P.M. of the 1 day of *March*, 19—, for the purpose of transfers for qualification of stockholders for said meeting.

(Signed).

SECRETARY

FORM 54

CALL FOR SPECIAL MEETING BY STOCKHOLDERS

We, the undersigned, being all the stockholders of the *Rex* company, of *Baltimore*, hereby call a special meeting of the stockholders of the said company, to be held at its office, No. 100 *Doe* Street, city of *Baltimore*, on the 2 day of *June*, 19—, at 1 o'clock P.M. of said day, for the purpose of electing a director and we hereby waive all statutory and by-law requirements as to notice of time, place and object of said meeting, and hereby agree to the transaction thereat of any and all business pertaining to the affairs of said company.

(Signed) _____

FORM 55

STOCKHOLDERS' REQUEST FOR CALLING SPECIAL MEETING

To *John Doe*, President of the *Rex* Company:

We, the undersigned, owners of not less than two-thirds of the entire voting stock of the said *Rex* company, do hereby request you to call a special meeting of its stockholders, to be held in the office of the company, at No. 100 *Doe* Street, city of *Baltimore*, at 2 o'clock in the afternoon on the 2 day of *July*, 19—, for the purpose of considering the action of the directors of this company in purchasing, in opposition to the expressed wishes of a majority of its stockholders, the real estate and manufacturing plant of the *Matson* company, located at 200 *East Street*, and to take such action in regard thereto as may seem necessary or desirable to the stockholders.

We further request that you have due and timely notice of said meeting sent to each stockholder of this company.

Names	No. of Shares
<i>William Brown</i>	225
<i>Harriet Scott</i>	301
<i>Timothy O'Neal</i>	450
<i>Jonathan Wild</i>	610
<i>Russell Jones</i>	790

GENERAL BY-LAWS OF CORPORATION

ANNUAL MEETING

Section 1. The annual meeting of the stockholders of this company shall be held at the office of the corporation, in the *city* of *Denver*, on the first Monday in January of each and every year, at 10 o'clock A.M. for the election of directors and such other business as may properly come before said meeting. Notice of the time, place and object of such meeting shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such meeting, in the manner required by the laws of the state, and by serving personally or by mailing, at least 10 days previous to such meeting, postage prepaid, a copy of such notice, addressed to each stockholder at his residence or place of business, as the same shall appear on the books of the corporation. No business other than that stated in such notice shall be transacted at such meeting without the unanimous consent of all the stockholders present thereat, in person or by proxy.

SPECIAL MEETINGS

Section 2. Special meetings of stockholders, other than those regulated by statute, may be called at any time by a majority of the directors. It shall also be the duty of the president to call such meetings whenever requested in writing so to do, by stockholders owning 51% of the capital stock. A notice of every special meeting, stating the time, place and object thereof, shall be given by mailing, postage prepaid, at least 10 days before such meeting, a copy of such notice addressed to each stockholder at his post office address as the same appears on the books of the corporation.

QUORUM

Section 3. At all meetings of stockholders, there shall be present, either in person or by proxy, stockholders owning 51% of the capital stock of the corporation, in order to constitute a quorum, except at special elections of directors pursuant to the laws of the state governing corporations.

VOTING CAPACITY

Section 4. At all annual meetings of stockholders the right of any stockholder to vote shall be governed and determined as prescribed in the laws of the state governing corporations.

POSTPONED ANNUAL MEETING

Section 5. If, for any reason, the annual meeting of stockholders shall not be held as thereinbefore provided, such annual meeting shall be called and conducted as prescribed in the laws of the state governing corporations.

REGISTERED STOCKHOLDERS ONLY MAY VOTE

Section 6. At all meetings of stockholders, only such persons shall be entitled to vote in person and by proxy who appear as stockholders upon the transfer books of the corporation for 30 days immediately preceding such meeting.

ORDER OF BUSINESS

Section 7. At the annual meetings of stockholders the following shall be the order of business, viz.:

1. Calling the roll.
2. Reading, notice and proof.
3. Report of officers.
4. Report of committee.
5. Unfinished business.
6. New business.
7. Election of directors.
8. Miscellaneous business.

MANNER OF VOTING

Section 8. At all meetings of stockholders all questions, except the question of an amendment to the by-laws, and the election of directors and inspectors of election, and all such other questions, the manner deciding which is specially regulated by statute, shall be determined by a majority vote of the stockholders present in person or by proxy; provided, however, that any qualified voter may demand a stock vote, and in that case, such stock vote shall immediately be taken, and each stockholder present, in person or by proxy, shall be entitled to one vote for each share of stock owned by him. All voting shall be *viva voce*, except that a stock vote shall be by ballot, each of which shall state the name of the stockholder voting and the number of shares owned by him, and in addition, if such ballot be cast by proxy, it shall also state the name of such proxy.

SAME

Section 9. At special meetings of stockholders, the provisions of the laws of the state governing corporations shall apply to the casting of all votes.

CORPORATIONS

DIRECTORS

ELECTION

Section 1. The directors of this corporation shall be elected by ballot, for the term of one year, at the annual meeting of stockholders, except as hereinafter otherwise provided for filling vacancies. The directors shall be chosen by a plurality of the votes of the stockholders, voting either in person or by proxy, at such annual election as provided by the laws of the state governing corporations.

VACANCIES

Section 2. Vacancies in the board of directors, occurring during the year, shall be filled for the unexpired term by a majority vote of the remaining directors at any special meeting called for that purpose, or at any regular meeting of the board.

DEATH OR RESIGNATION OF ENTIRE BOARD

Section 3. In case the entire board of directors shall die or resign, any stockholder may call a special meeting in the same manner that the president may call such meetings, and directors for the unexpired term may be elected at such special meeting in the manner provided for their election at annual meetings.

RULES AND REGULATIONS

Section 4. The board of directors may adopt such rules and regulations for the conduct of their meetings and management of the affairs of the corporation as they may deem proper, not inconsistent with the laws of the state of _____, or these by-laws.

TIME OF MEETING

Section 5. The board of directors shall meet on the first Monday of every month, and whenever called together by the president upon due notice given to each director. On the written request of any director, the secretary shall call a special meeting of the board.

COMMITTEES

Section 6. All committees shall be appointed by the board of directors.

OFFICERS

APPOINTMENT TERM

Section 1. The board of directors, immediately after the annual meeting, shall choose one of their number by a majority vote to be president, and

they shall also appoint a vice-president, secretary and treasurer. Each of such officers shall serve for the term of one year, or until the next annual election.

DUTIES OF PRESIDENT

Section 2. The president shall preside at all meetings of the board of directors, and shall act as temporary chairman at, and call to order all meetings of the stockholders. He shall sign certificates of stock, sign and execute all contracts in the name of the company, when authorized so to do by the board of directors; countersign all checks drawn by the treasurer; appoint and discharge agents and employees, subject to the approval of the board of directors; and he shall have the general management of the affairs of the corporation and perform all the duties incidental to his office.

DUTIES OF VICE-PRESIDENT

Section 3. The vice-president shall, in the absence or incapacity of the president, perform the duties of that officer.

DUTIES OF TREASURER

Section 4. The treasurer shall have the care and custody of all the funds and securities of the corporation, and deposit the same, in the name of the corporation, in such bank or banks as the directors may elect; he shall sign all checks, drafts, notes and orders for the payment of money, which shall be countersigned by the president, and he shall pay out and dispose of the same under the direction of the president; he shall at all reasonable times exhibit his books and accounts to any director or stockholder of the company upon application at the office of the company during business hours; he shall sign all certificates of stock signed by the president; he shall give such bonds for the faithful performance of his duties as the board of directors may determine.

DUTIES OF SECRETARY

Section 5. The secretary shall keep the minutes of the board of directors, and also the minutes of the meetings of stockholders; he shall attend to the giving and serving of all notices of the company, and shall affix the seal of the company to all certificates of stock, when signed by the president and treasurer; he shall have charge of the certificate-book and such other books and papers as the board may direct; he shall attend to such correspondence as may be assigned to him, and perform all the duties incidental to his office. He shall also keep a stock-book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them re-

spectively, the time when they respectively became the owners thereof, and the amount paid thereon, and such book shall be open for inspection as prescribed by the laws of the state governing corporations.

CAPITAL STOCK

SUBSCRIPTIONS—PAYMENT

Section 1. Subscriptions to the capital stock must be paid to the treasurer at such time or times, and in such installments, as the board of directors may by resolution require. Any failure to pay an installment when required to be paid by the board of directors shall work a forfeiture of such shares of stock in arrears, pursuant to the laws of the state governing corporations.

CERTIFICATES OF STOCK

Section 2. Certificates of stock shall be numbered and registered in the order they are issued, and shall be signed by the president or vice-president and by the secretary and treasurer, and the seal of the corporation shall be affixed thereto. All certificates shall be bound in a book, and shall be issued in consecutive order therefrom, and in the margin thereof shall be entered the name of the person owning the shares therein represented, the number of shares and the date thereof. All certificates exchanged or returned to the corporation shall be marked canceled, with the date of cancellation, by the secretary, and shall be immediately pasted in the certificate book, opposite the memorandum of its issue.

TRANSFERS OF STOCK

Section 3. Transfers of shares shall only be made upon the books of the corporation by the holder in person, or by power of attorney duly executed and acknowledged and filed with the secretary of the corporation, and on the surrender of the certificate or certificates of such shares.

INCREASE—SUBSCRIPTIONS

Section 4. Whenever the capital stock of the corporation is increased, each bona fide owner of its stock shall be entitled to purchase at par value thereof, an amount of stock in proportion to the number of shares of stock he owns in the corporation at the time of such increase.

DIVIDENDS

Section 1. Dividends shall be declared and paid out of the surplus profits of the corporation as often and at such times as the board of directors may determine, and in accordance with the laws of the state governing corporations.

INSPECTORS

Section 1. Two inspectors of election shall be elected at each annual meeting of stockholders to serve for one year, and if any inspector shall refuse to serve or shall not be present, the meeting may appoint an inspector in his place.

SEAL

Section 1. The seal of the corporation shall be in the form of a circle, and shall bear the name of the corporation and the year of its incorporation.

AMENDMENTS

Section 1. These by-laws may be amended at any stockholders' meeting by a vote of the stockholders owning a majority of the stock, represented either in person or by proxy, provided the proposed amendment is inserted in the notice of such meeting. A copy of such amended by-law shall be sent to each stockholder within ten days after the adoption of the same.

By-laws are not required to be filed in any public office. After adoption they should be entered in the book of minutes of the corporation.

WAIVER OF NOTICE

Section 1. Whenever, under the provisions of these by-laws or of any of the corporate laws, the stockholders or directors are authorized to hold any meeting after notice or after the lapse of any prescribed period of time, such meeting may be held without notice and without such lapse of time by a written waiver of such notice signed by every person entitled to notice.

FORM 57

NOTICE OF DIRECTORS' MEETING

June 1, 19—.

Dear Sir: You are hereby notified that the regular monthly meeting of the board of directors of the *Rex* company will be held at the office of the company, room 101 *Randall* building, No. 100 *Doe* street, city of *Baltimore*, at 10 o'clock A.M. on the 15 day of *June*, 19—.

SECRETARY

FORM 58

NOTICE OF ELECTION AND MEETING OF DIRECTORS

June 10, 19—

Mr. *John Doe*, 1410 U Street.

Dear Sir: At a meeting of the directors of this company held this 2 day of *June*, 19—, you were duly elected a member of the board to fill the vacancy caused by the death of Mr. *Joseph Brown*.

The next regular meeting of the board will be held at the office of the company on the 15 day of *July*, 19—.

Will you kindly indicate your acceptance of the election at your earliest convenience?

Respectfully,

SECRETARY

FORM 59

DECLARATION OF DIVIDENDS

Resolved, that a dividend of 6 per cent on the capital stock of this company be, and the same is hereby declared payable out of the surplus earnings of the company to the stockholders according to their respective holdings; the same to be paid on the 15 day of *December*, 19—.

FORM 60

DISSOLUTION BY INCORPORATORS

We, *John Doe*, *Richard Brown*, and *Thomas Smith*, being all the incorporators named in the articles and certificate of incorporation of the *Ogden Manufacturing Company*, and which said articles and certificate of incorporation were filed for the purpose of creating a domestic corporation, other than a moneyed or transportation corporation, do hereby, pursuant to the governing statute, certify as follows:

1. That the above are the names of all the incorporators of the said Manufacturing Company.
2. That no part of the capital stock of said corporation has been paid.
3. That said corporation has no liabilities whatever.

4. That the business for which said corporation was created has not been begun and that the said incorporators have not undertaken or conducted any business whatever under said organization or as a corporation.

5. That we, the above named incorporators, do hereby surrender to the state and its proper officers all the rights and franchises obtained for and in behalf of said corporation, and that we hereby, on our part, disaffirm and revoke the said articles of incorporation and hereby declare our intention not to undertake, conduct or carry on the objects of said corporation and hereby declare that we will no longer act as a corporation.

In Witness Whereof, we have executed this certificate in duplicate.

Dated this 10 day of *October*. 19—.

State of *California*)
) ss.

County of *Los Angeles*)

John Doe, Richard Brown, and Thomas Smith, being severally duly sworn, each for himself, deposes and says, that he is one of the incorporators named in the foregoing certificate; that he has read the foregoing certificate subscribed by him and knows the contents thereof, and that such certificate is true in substance and in fact.

NOTARY PUBLIC

FORM 61

WRITTEN CONSENT OF STOCKHOLDERS TO DISSOLUTION

STATE OF *California*)
) ss.

COUNTY OF *Los Angeles*)

We, the undersigned, stockholders of the *Ogden* Company, being holders of at least two-thirds in amount of the stock of said company, now outstanding, as shown herein, have consented and do hereby consent that said *Ogden* Company shall be forthwith dissolved.

We hereby state and show that the undersigned is each a stockholder of said corporation and that each owns the number of shares of said corporation set opposite his respective name as follows:

<i>John Doe</i>	— 300 Shares
<i>Richard Brown</i>	— 450 Shares
<i>Thomas Smith</i>	— 475 Shares

And we do hereby sign this instrument for the purpose of signifying our consent in writing as required by Section of the general corporation law.

In Witness Whereof, we have hereunto set our hands this 2 day of *June*, 19—.

JOHN DOE

RICHARD BROWN

THOMAS SMITH

FORM 62

CERTIFICATE OF CHANGE OF PRINCIPAL OFFICE VOTE OF STOCKHOLDERS

We, the undersigned, *John Doe*, president, and *Richard Roe*, secretary, and a majority of the board of directors of the *Long Company*, a corporation organized under the laws of the state of *New York*, do hereby certify as follows, to wit:

That a duly called special meeting of the stockholders of this corporation was held at its principal office in the city of *New York*, state of *New York*, on the 2 day of *June*, 19—, at which meeting stockholders owning 900 shares of the stock were present in person and by proxy.

That the meeting was organized by the selection of *John Doe* as chairman and *Richard Roe* as secretary.

Thereupon the following resolution was offered for adoption:

"Resolved, That the principal office and place of business of this corporation be changed from the city of *New York*, state of *New York*, to the city of *Baltimore*, state of *Maryland*.

"And Be It Further Resolved, That the president, secretary and directors be authorized, and they are hereby directed and authorized to effect such changes pursuant to law."

And thereupon on motion the said resolution was adopted by a majority of all the votes cast on such motion to adopt.

1. The name of this corporation is *The Long Company*.
2. That its principal office and place of business as fixed by the original articles of incorporation was and still is in the city of *New York*, state of *New York*.
3. That it is desired to change its principal office and place of business of the corporation to the city of *Baltimore*, *State of Maryland*, and that it

is the purpose of said corporation to actually transact and carry on its regular business from day to day at such last-named place.

4. That said change has been authorized by a vote of the stockholders of said corporation, at a special meeting of the stockholders called for that purpose as above shown.

5. That the names of the directors and their respective places of residence are as follows, to wit:

Names	Residences
<i>John Doe</i>	<i>New York</i>
<i>Richard Roe</i>	<i>Philadelphia</i>
<i>Samuel Black</i>	<i>Baltimore</i>
<i>William Brown</i>	<i>Washington, D. C.</i>

In Witness Whereof, we have hereunto set our hands this 10 day of June, 19—.

Subscribed and sworn to *this 10 day of January, 19—.*

CHAPTER XIII

Torts

A TORT IS a private or civil wrong or injury.

In general, the law recognizes certain rights as belonging to every individual. There is the right to personal security, to liberty, to property, to reputation, to the services of a daughter or servant, to the companionship of a wife. Any violation of these rights is a tort. Similarly, the law recognizes certain duties as being obligatory with every individual—as, for example, the duty of not deceiving another by false representation, of not persecuting another maliciously, of not using one's property to injure another. The violation of any of these duties, which results in damages, is also a tort.

The law of torts is concerned with the redress of injuries which are neither crimes nor arise from the breach of contracts. All acts or omissions of which the law takes notice are classed under the three heads of contracts, crimes and torts. The first includes agreements and the injuries resulting from their breach. Crimes include acts injurious to the public or state. Torts include injuries only to individuals. An act, however, may be both a tort and a crime at the same time. Assault and battery, a tort, may be likely to lead to a breach of the peace, thus becoming a matter of public concern and therefore a crime. Torts which are crimes at the same time include assault, libel and nuisance. In these cases, a public prosecution and a private action for damages may both be maintained, either at the same or at different times.

The bulk of this chapter deals with negligence, one of the chief divisions of the law of torts.

What is negligence? Negligence is the failure to exercise that degree of care which an ordinarily careful and prudent person exercises under the same or similar circumstances. Thus, the mere fact that a person suffers a broken leg while alighting from a street car does not necessarily mean that he can collect from the transit company. To obtain a settlement or win a lawsuit, it must be shown that the operator of the street car was careless or reckless in its management. A case of negligence is made out, for example, when it is proved that the street car started off with a "sudden, violent and unusual jerk," or that the operator carelessly closed the door on the claimant's leg, or that there was some oily substance on the platform steps causing the claimant to fall. If, on the other hand, the accident was caused by the passenger's own clumsiness, a verdict will be returned in favor of the transit company. It follows, then, that before there can be a recovery in a personal injury case two things must be proved: first, that the party making a claim or filing suit (the plaintiff) sustained some injury; second, that the party against whom a claim is being made (the defendant) was guilty of negligence in causing the accident.

Whether a damage suit is won or lost often depends upon the quantity and quality of the witnesses. The more witnesses the plaintiff procures, the more he strengthens his case. A witness, to be effective, must not only be able to tell a credible story but must be able to bear up under the rigors of cross-examination. The best witnesses are those who give a simple, straightforward account of what happened, who are not easily shaken on cross-examination, and whose appearance and character are likely to impress a judge and jury. It is far better to have one good witness than five poor ones.

If you are unfortunate enough to get involved in an accident, consult your attorney promptly. *Don't try to handle the case your-*

self! Just as no sensible person would think of setting a broken leg without a physician, so no one ought to attempt to compromise a personal injury claim without profiting by the advice of an experienced lawyer.

One reason for this is that the average person has little idea of the value of his case. His demands are either excessive, in terms of the injuries received, or far below what they are usually worth. Trading on the credulity of claimants, some insurance adjusters are able to procure a settlement for a fraction of what the case should normally bring.

A striking example of this took place recently. Passing through a red traffic signal, one taxicab collided with another, injuring a passenger. As a result of the impact, Brown, the passenger, bruised his shoulder when thrown to the floor of the cab. Within the hour, an investigator called at the man's home and offered to settle with him for \$50. After some bickering, the passenger signed a paper (release) relieving the taxicab company of all further liability, and accepted the \$50.

Two weeks later, Brown noticed he was having trouble raising his arm. As the days passed, his shoulder became worse. Finally, alarmed, he consulted an orthopedic surgeon. X rays were taken and a diagnosis of arthritis was made. Apparently, Brown had had a dormant arthritis without suffering any degree of discomfort. According to the surgeon, the blow to the shoulder seriously aggravated the condition, eventually causing a fifty-per-cent permanent disability. And the case had been settled for \$50!

Now for a few final cautions:

1. Consult a lawyer as soon as possible.
2. Don't sign any paper submitted by the defendant unless advised to do so by your attorney.
3. Make no verbal statement or admission to the defendant or his representative, relating either to the accident or your injuries, before seeing your lawyer.

Have photographs taken as soon as possible. Pictures showing the physical damage in an automobile collision and the point of impact between two vehicles are especially helpful. Have measurements made of skid marks, as skid marks are evidence of speed. Since a picture is more effective than any verbal statement, photographs of any defect alleged to be the cause of an accident should be taken promptly, particularly in cases involving a hole in the street or a defective step in a house.

1. *Question:* Coming up close to Mary, John shakes a stick in her face, threatening to strike her, although he does not actually do so. Mary is frightened and, from the shock and fright, suffers a miscarriage. She files suit against John for damages. Does she have a claim?

Answer: Yes. John has committed an assault by threatening Mary with violence, accompanying his threats with menacing gestures. Such conduct is actionable, even though no physical injury results.

2. *Q.* Albert, without justification, bursts into Brenda's room in a hotel and uses violent and abusive language toward her. As a consequence of the nervous shock received through Albert's conduct, Brenda is made ill. Does she have a claim against Albert?
 - A. Yes. Mere insults and abuse do not amount to an assault if no violent touching is involved. In this case, however, Brenda has suffered bodily harm.
3. *Q.* In the course of an argument you angrily point an unloaded pistol at Bill, threatening to shoot him. The gun is empty and you know it, but Bill does not. Bill sues you. May he recover?
 - A. Yes. Bill was put in fear of bodily harm, even though the gun was actually unloaded and the threat could not be carried out.
4. *Q.* As a joke, you tell Brenda that her husband has been killed in an automobile accident. The shock which this false statement gives Brenda, a rather nervous woman, brings on a serious illness. Are you liable in damages to Brenda?

- A. Yes, since you should have foreseen that the intended fright might cause Brenda bodily injury. You would not be liable, however, if Brenda suffers fright without bodily injury.
5. Q. As a practical joke on Arthur, who is asleep on a beach, Jack holds a magnifying glass in such a way as to focus the sun's rays on Arthur's head. He keeps this up until Arthur awakes from the pain caused by the heat, and compels Jack to stop. Arthur's head is severely burned. Does he have a claim against Jack?
- A. Yes. Jack has committed a battery on Arthur by intentionally burning him. The fact that Jack did it as a joke does not excuse him.
6. Q. As a joke, Arthur throws a firecracker in front of an automobile which is being driven rapidly but within the speed limit. The explosion so startles the driver that he loses control of the car and swerves into a stone wall, injuring himself and the passengers. Is Arthur liable in damages?
- A. Yes. Arthur knew, or should have known, that a sudden fright or shock is likely to cause the person subjected to it to react instinctively, without regard to the danger involved. In hurling the firecracker Arthur was the proximate cause of the injuries.
7. Q. Arthur has a legal right to enter a certain building. To keep Arthur out, Bill locks all the doors and windows so that Arthur is unable to get in. Arthur sues Bill for false imprisonment. Can he recover?
- A. No. To constitute an imprisonment it is necessary that a person be confined. In this case, Arthur is not confined, since he is at liberty to go anywhere in the world—except the particular place from which he is barred.
8. Q. James is asleep in a room high above the ground, with no available means of exit but one door. Bill, knowing James is in the room, locks the door from the outside, though he has no legal authority to do so. Before James awakes, Bill unlocks the door so that when James is ready to leave, he is able to do so. Later, James, learning that Bill locked him in the room, files suit against him. Can he recover?
- A. No. If James had tried to get out and had been unable to do so because he was locked in, he would have had a claim

against Bill, but since James was unaware of any restraint, he could suffer no injury for which he could be compensated.

9. Q. Arthur locks the door of the room in which Bill is sitting. Arthur knows, but believes Bill does not know, that there is an unlocked but concealed door through which Bill could, if he knew it, escape. Bill does not know of the unlocked door. Does Bill have a claim against Arthur?
A. Yes. Bill has been unlawfully deprived of his liberty.
10. Q. Arthur is a patron in Jack's restaurant. As Arthur is about to leave, Jack tells him to wait while an investigation is made to determine whether or not Arthur paid his bill. When it is learned that Arthur did actually pay, he is allowed to go. Does Arthur have a claim against Jack for false imprisonment?
A. Yes, if the jury finds that Arthur was detained for an unreasonable time or in an unreasonable way. Otherwise, no.
11. Q. You buy a bottle of peroxide which, when you uncork it, explodes and causes you personal injuries. Against whom do you have a claim?
A. You may sue the manufacturer. You may also have a claim against the retailer if you can prove that he was negligent in selling the peroxide to you.
12. Q. You buy a heating pad which, through faulty construction, gives off an excessive amount of heat, causing a severe burn. Against whom do you have a claim?
A. Both the manufacturer and the seller of the heating pad are liable.
13. Q. At a seaside resort, a beach umbrella, blown through the air, strikes and injures Bill. Is the resort liable?
A. Yes. The danger of such a happening should reasonably have been foreseen by the management.
14. Q. Your wife goes to a beauty shop to get a permanent wave. In the course of the treatment she suffers scalp burns. Is the beauty shop owner liable in damages?
A. Yes. A beauty shop proprietor is under a duty to exercise the care which a reasonably prudent and skillful person

engaged in the same calling would exercise under the same or similar circumstances.

15. *Q.* You buy a soft drink from a confectionery store. While drinking its contents, you discover that a small mouse has somehow gotten into the bottle. You become ill and seek to recover damages against the manufacturer. Can you?
- A.* Yes. A manufacturer of beverages is liable to the consumer for any injuries resulting from impurities in the beverage. However, if the manufacturer can prove, as he usually does, that he used the care, skill and diligence in and about the manufacturing and bottling of the soft drink that a reasonably careful, skillful and diligent person engaged in a similar business would use, that is all the law requires and the plaintiff is barred from recovery.
16. *Q.* Smith manufactures and places on the market a patent medicine. The dose prescribed on the bottle contains mercury in poisonous quantities. You purchase a bottle of the medicine and your wife, taking the prescribed dose, is made seriously ill. Is the manufacturer liable to your wife?
- A.* Yes. The negligence of the manufacturer consists in the fact that the dosage labelled on the bottle is misleading.
17. *Q.* You are a customer in a department store. You walk through the aisle, looking at goods displayed on the counters. While doing so, you stumble over an obstruction in the aisle—which you could have seen had you been looking at the floor instead of at the goods on the counter. Is the department store liable?
- A.* Yes. You are entitled to rely on the fact that the aisle is reasonably safe for patrons of the store.
18. *Q.* While walking down the stairway of a department store, you slip, falling on your back. May the department store be held liable?
- A.* No. The department store or its servants must have been negligent in some way before liability can be established. If, for example, your falling is caused by the existence of an oily substance which the employees of the store negligently fail to remove, the store would be liable.

19. Q. While walking down the aisle of a motion picture theater, you stumble and fall over a piece of torn carpet, injuring yourself. Is the theater liable?

A. Yes, if you can show that the condition of the carpet was known to the owner of the theater, or had existed for such a length of time that the theater owner should have known of it.

20. Q. A boy gains admission to a circus by crawling under the canvas. While seated with the paying patrons, he is injured by the negligence of one of the clowns who explodes a giant cracker too near the audience. Is the circus liable for the boy's injuries?

A. Yes. The circus has a duty to exercise reasonable care in conducting its activities so as to avoid causing bodily harm to those even wrongfully on the premises.

21. Q. John, who operates a hotel, employs Bill as a plumber to install a shower bath. Bill negligently transposes the handles so that the hot water pipe is labeled "cold." A guest, deceived by the label, turns on the hot water and is scalded. Is the hotel liable?

A. Yes. John is as liable as if he had done the work himself instead of entrusting it to the plumber.

22. Q. Arthur tells his dentist to extract a particular tooth. Having given Arthur an anesthetic, the dentist discovers a cavity in an adjoining tooth which he rightly concludes to be the cause of the ache. He pulls the adjoining tooth. Does Arthur have a cause of action against the dentist?

A. Yes. Arthur directed the dentist to extract one particular tooth. The fact that he would have consented to the extraction of a different tooth is immaterial. If the arrangement had been for the dentist to extract a tooth which, in his opinion, was the cause of Arthur's pain, Arthur would have no claim, since he gave his consent to the dentist's action. In the absence of such an arrangement, the dentist is liable. The same principle of law is true in surgical operations. An operation performed on a patient without his consent is actionable at law, since it is an invasion of the rights of another.

23. Q. Arthur suffers from a disease of his right kidney. His physician advises him to submit to an operation for its removal, but Arthur refuses. Later, Arthur consents to another minor operation and, for that purpose, submits to anesthesia. The physician removes Arthur's kidney. Does Arthur have a claim against the physician?
- A. Yes. An unlawful "battery" against Arthur's body has taken place.
24. Q. Arthur goes to a hospital for an appendectomy and is taken to the operating room. By a mistake of the hospital force, the surgeon who is to operate on Arthur is given the record of Charles, instead. Charles' record calls for an operation upon a tumor on his back. Misled by this error, the surgeon makes an incision in Arthur's back before the error is discovered. Is the surgeon liable?
- A. Yes. The unauthorized operation is an invasion of the patient's privacy for which the surgeon is held accountable.
25. Q. Your dentist fails to remove part of the root of a tooth extracted by him. He tells you, however, that he has done so. As a result, your jaw becomes infected and you are hospitalized for a few weeks. Can the dentist be charged with negligence?
- A. Yes. Dentists have been held liable for improper treatment of a cavity after extraction, resulting in infection; use of unsterilized instruments; improper removal of an impacted tooth; unnecessarily removing several healthy teeth and failure to stem the flow of blood from an artery following an extraction. A dentist, like a physician, is not liable, however, for errors of judgment where the proper course is reasonably doubtful.
26. Q. Arthur and Bill are players on opposite sides in a football game. In the course of the game, Bill tackles Arthur who is injured. Does Arthur have a claim?
- A. No. By participating in the game Arthur assumes the risks that go with it and to which the law implies that he gave his consent.
27. Q. Arthur, age eight, in company with a group of other boys, repeatedly plays on Bill's lumber pile kept on Bill's land. Bill

has often ordered the boys off the premises, Arthur himself having been ejected several times. Seeing the boys on the pile of lumber, Bill picks up a stick and runs toward them, shaking the stick and shouting to them to "Get out of there." John, frightened, runs out into the near-by street. There he is struck by a passing automobile which is being operated with reasonable care. Is Bill liable in damages?

A. No. The boy is a trespasser and Bill may employ reasonable force, if necessary, to expel a trespasser from the premises, though he cannot kill him or inflict serious bodily harm.

28. Q. Arthur, holding a cane, is standing on the road. Bill, a one-legged man, flourishes a knife and threatens to attack Arthur. Arthur stands his ground. When Bill comes close, he strikes Bill's leg with his cane, so that he falls to the ground and is bruised. Arthur could have avoided the whole incident by going into his house a short distance away and locking the door. Is he liable to Bill for damages?

A. No. One may use such force in self-defense as appears reasonably necessary under the circumstances.

29. Q. Arthur attacks Bill upon the street. Bill raises his cane to ward off Arthur's attack and, in so doing, strikes Charles, a bystander. Is Arthur or Bill liable in damages?

A. Arthur, because he is the proximate cause of Charles' injuries.

30. Q. Arthur, a small boy, throws a snowball at Bill. He hits Bill in the eye, causing him severe pain. May Bill, in retaliation, "beat up" Arthur?

A. No, not unless he believes that Arthur will continue to throw snowballs at him. Should Arthur do so, Bill has a right to use force to compel the boy to desist, an assault and battery having been committed.

31. Q. John is a guest at the Hillside Hotel. At John's invitation, Bill goes to the hotel, visits John in his room and plays cards for money. Gambling is a criminal offense in this particular state. The elevator shaft in the hotel is in a dark place and, on leaving, Bill sustains injuries by falling into the open elevator shaft when he thinks he is stepping into the elevator itself. Does Bill have a claim against the hotel?

- A. No. To a guest in a hotel the innkeeper has an obligation to use due care to keep the premises reasonably safe and to discover and remove dangerous conditions. He owes the same duty to one who comes on proper business with a hotel guest—as, for example, to a merchant who comes to inspect a salesman's samples or to a friend who comes to pay a social call. In this case, however, Bill has come for an unlawful purpose, not on proper business of the hotel or the guest; therefore, he cannot claim the benefit of the duty owed an invited guest whose business is lawful. Bill is a mere trespasser to whom the hotel owes no duty save to actively refrain from injuring him.
32. Q. You invite Bill to your house for dinner. As Bill starts to ring your doorbell, his leg goes through the porch floor, due to the defective condition of the porch. The defect is unknown to you. Are you liable to Bill?
- A. No. Bill can recover only for such defects as are known to the occupant of the house. You owe no duty to inspect for concealed dangers. If Bill does sue you, you can defend on the ground that you did not know the porch floor was defective. If evidence is produced to the contrary, the question becomes one of fact to be resolved by a jury or by the court sitting as a jury. The burden of proof is on Bill to show that you had knowledge of the defect. If he can offer no such evidence, he will lose his case.
33. Q. You lend Bill your automobile to go for a ride. The car is defective and, while Bill is driving it, he is injured. You do not know of the defect. Does Bill have a claim against you?
- A. No. If you had loaned the car with a hidden defect to Bill, for a consideration, you would have been liable. But one who lends a car without receiving anything of value in return (the consideration) is not liable—except for defects which he knows and should recognize as making the car dangerous to use.
34. Q. The Dixie Motor Car Company sells automobiles which are assembled from parts purchased from other manufacturers. The Dixie Company buys the chassis, including brake mechanics, from the Boston Company. Through the Boston Company's negligence, the brakes in one car are defective.

The Dixie Company could have discovered the defect if a reasonable inspection had been made, but it was not. Once the car is assembled, the defect is not discoverable unless the entire car is torn down. The Dixie Company sells the car to the Charles Company, dealer in automobiles. The Charles Company then sells the car to Paul, a retail customer. When Paul is driving the car carefully, he collides with Smith's automobile, which is also being driven carefully, because of the defective brakes. Smith is hurt. Against whom does Smith have a claim?

- A. The Boston Company. Paul is not liable because he was driving carefully. The Boston Company is responsible for the accident, since it allowed the car to go out with defective brakes, the proximate cause of the collision.
35. Q. A boiler insurance company, as part of its service, undertakes to inspect your boiler. It issues a certificate that the boiler is fit for use. Relying upon this certificate, you use the boiler. It explodes, due to a defect which a reasonably careful inspection would have disclosed. The explosion wrecks the adjacent building, causing the occupants therein bodily harm. Who is liable?
- A. The boiler insurance company. If it is part of a person's business or profession to give information or advice regarding matters upon which the personal safety of another depends, he must exercise reasonable care that the information is sufficiently accurate to insure the safety of such persons. The boiler company was negligent in failing to find a defect which could have been discovered.
36. Q. Arthur's house contains a mass of oil-soaked rags in a corner of his basement. The rags take fire spontaneously, the fire spreading to Burt's house next door. Is Arthur liable to Burt whose house has been partially destroyed by fire?
- A. Yes. Arthur would be charged with knowledge of the combustible quality of the rags, although he may be actually ignorant of that fact.
37. Q. You own a flock of chickens. Your neighbor, who lives across the road from you, has a freshly-planted garden. Although your yard is enclosed by a fence, your chickens get out, go into your neighbor's garden and cause consider-

able damage before they can be removed. Your neighbor now seeks to hold you liable. Can he?

A. Yes. The rule is that an owner of animals is liable for trespass committed by them, even though he uses due care to keep them restrained.

38. Q. Richard, a broker, buys a farm through his agent, the agent telling him that the farm is a sound investment. Later, needing money, Richard decides to sell the farm. He has never seen the property. Richard tells Harry, an inexperienced young man who has just inherited some money, that the farm contains good corn land, is a sound investment and will provide Harry with an income. Harry, without further investigation, relying on Richard's recommendation, buys the farm for \$15,000. It is not good corn land and is worth only \$10,000. Harry now seeks to recover his money. May he?

A. Yes. Richard misrepresented the facts. He had never seen the farm and therefore knew nothing of it; yet he stated specifically that it was good corn land.

39. Q. A state law declares that any man having sexual intercourse with a girl under eighteen years of age, not his wife, is guilty of rape, regardless of whether or not the girl consents. The law is silent on the subject of civil liability. Arthur has intercourse with Bernice, who is under eighteen, but with her consent. Does Bernice have a claim for damages against Arthur?

A. Yes. Such a law is designed to protect young girls from the consequences of their own act.

40. Q. A strong swimmer sees a man floundering in deep water. Not knowing the man's identity, he goes to his rescue. When he discovers that the drowning man is a man whom he hates, the swimmer turns away, letting the other man drown. Is the swimmer liable in damages?

A. No. A person is under no legal duty to aid or protect another who has fallen into peril through no fault of the former.

41. Q. You see a blind man about to step into the street in front of an approaching automobile. You could prevent him from

doing so, by a word or touch, without delaying your own progress. Yet you do not do so. The blind man is run over and hurt. Can you be held liable?

A. No. There is no legal duty imposed on you to go to the blind man's rescue.

42. Q. John operates a private sanitarium for the insane. Through the negligence of the guards employed by him, a homicidal maniac escapes and attacks Bill, a stranger. Is the hospital liable?

A. Yes. One who voluntarily takes charge of a person who he knows, or should know, is likely to cause bodily harm to others if not controlled is liable in damages to the person harmed.

43. Q. John, a guest in your house, is seriously ill and in need of immediate medical attention. You call your physician on the telephone, the physician promising to come immediately, thereby causing you not to summon other medical aid. The physician neglects to come until several hours later. As a result, John's illness is aggravated, due to lack of immediate attention. Is the physician liable?

A. Yes. He is liable in damages for the aggravation of the illness. John had a right to rely on the promise that the physician would come promptly. The latter was negligent in failing to come as promised, or, at the very least, notifying John that he would be tardy so that another physician might be called.

44. Q. A mining company knows that children in the neighborhood are in the habit of playing around the mouth of a pit. One of the employees of the company leaves a cartridge of blasting powder lying in a shed which the children, to the knowledge of the company, have used as a playhouse. Youngsters, coming to play, find the cartridge and use it as a plaything. They cause it to explode, the explosion injuring one of the children. Is the mining company liable?

A. Yes. The company officials knew that the children were likely to trespass around the mouth of the pit. To knowingly leave dynamite under such circumstances is negligence.

45. Q. A manufacturing company permits the children of its workmen to enter the factory in order to bring their

fathers' lunch to them. A daughter of one of the employees comes into the factory for this purpose. While there she is hurt, due to the careless manner in which some of the workmen of the company do their work. Is the company liable for injuries sustained by the daughter?

- A. Yes. In the above case, the daughter is legally called a "licensee," this being a person privileged to enter or remain upon land with the landlord's consent, whether given by invitation or permission. To such persons the company would be liable for bodily harm caused by failure to carry on activities with reasonable care.
46. Q. During rush hours, the passengers on a street car are accustomed to crowd into it in a way likely to cause injury. The company fails to provide a sufficient staff of guards to prevent this practice. A passenger, hurt during a rush hour, files a claim against the street railway company. Is the company liable?
- A. Yes. Having knowledge of the crowded condition, it becomes necessary for the company to take active steps to prevent it. If a passenger is hurt as a result of its failure to provide the necessary guards, the company will be liable.
47. Q. John employs a building contractor to build a row of houses according to certain plans and specifications supplied by John. These plans require material and workmanship so cheap and inferior that any competent builder would realize that houses so built might collapse at any time. The contractor builds the houses under these plans and specifications. One of the homes collapses, thereby causing injury to a prospective purchaser. Is the contractor liable?
- A. Yes. Liability is based on the fact that the contractor knew that the house would not be reasonably safe. When, nevertheless, he went ahead and erected it, he made himself liable to those lawfully on the premises who might be injured.
48. Q. While moving his household goods, Arthur throws out of his window a heavy parcel, intending it to fall into a waiting cart. Before doing so, he calls out, "Watch out below." His aim misses, however, and the parcel falls onto the side-

walk, striking a pedestrian who did not hear the warning because his attention was directed to other matters. Is Arthur liable to the pedestrian?

A. Yes. The fact that Arthur shouted a warning does not relieve him from liability. In throwing the parcel out of the window, he is acting in a reckless manner and must assume the responsibility for the consequences of his act. Arthur should have waited until the sidewalk was actually clear of pedestrians before throwing out the parcel.

49. Q. A blind man walks along a sidewalk in which there is a hole. A normal man would see the hole and avoid it, but the blind man stumbles and falls as a consequence of walking into it. Does he have a claim against the city for his injuries, assuming that the city paved the walk?

A. Yes. The law makes allowance for physical defects which prevent a person from seeing, or acting in the way a normal person would.

50. Q. While crossing a street at night, you step into a hole, falling and breaking your arm. Do you have a claim against the city?

A. Yes, if you can show that the hole or defect was in the street for a sufficiently long time to have provided the city with notice of the defect, thus affording it an opportunity to repair it.

51. Q. Suppose the accident had occurred in the daytime. Would you still have a claim?

A. Yes, but not a strong one. The principle is that, in the daytime, you could have avoided the hole if you had looked. Failing to look might make you guilty of contributing to the accident.

52. Q. Bill boards a crowded street car, dropping his fare in the box. The conductor fails to notice that Bill has paid his fare and demands that he deposit another coin. Upon Bill's refusal, the conductor bodily removes him. Does Bill have a claim against the transit company?

A. No. If a passenger refuses to pay his lawful fare or to give proper evidence that he has paid it, he may be ejected from the car. However, if Bill, through witnesses, could prove that he did in fact pay his fare and was therefore wrong-

fully removed from the car, he would have a valid claim against the transit company.

53. Q. A young girl is a train passenger, holding a ticket to Baltimore. Falling asleep, she is carried beyond her station. The conductor asks for additional fare, but the girl, having no money, is unable to pay it. The conductor at once stops the train and puts the girl off. The place at which she is put off is an isolated spot near the camp of a construction gang. It is a notorious fact that many of this gang are of a rough and violent character. The girl is ravished by a member of this gang. Is the railroad liable?
- A. Yes. The railroad is guilty of negligence in ejecting the girl at a place which it knew, or should have known, was dangerous, thus affording an opportunity for misconduct.
54. Q. A telegraph company receives a message sent by Thompson, a wholesaler, calling for the delivery of five hundred bicycles. The message, reading, "five bicycles," is delivered to the bicycle manufacturer who fills the order for five bicycles. As a result of the altered telegram, Thompson is unable to fill his five hundred orders. Does he have a claim against the telegraph company?
- A. Yes. A message must be delivered exactly as furnished. For any alteration for which damages are sustained, a telegraph company is liable.
55. Q. Who has the right of way at an intersection, a motorist or pedestrian?
- A. Pedestrian.
56. Q. Who has the right of way between intersections, a motorist or pedestrian?
- A. Motorist.
57. Q. While crossing a street, not at the intersection, a pedestrian is struck by a motorist. Is the pedestrian barred from recovering?
- A. Theoretically, no. A pedestrian may cross a street wherever he chooses, but the fact that he does not cross at the proper place is something the jury will take into consideration in arriving at a verdict. In the above example, the likelihood

of the pedestrian collecting damages is much less than if he had been struck while crossing the intersection.

58. Q. Who has the right of way at an intersection controlled by traffic signals?

A. The one having the green light. Where the traffic signals are not in operation at an intersection, the pedestrian has the right of way over the motorist.

59. Q. Arthur, who has just obtained his driver's license, takes Bill for a ride in the country. While driving along a narrow stretch of road, Arthur's car runs off the paving onto the dirt shoulder. In maneuvering to regain the roadway, the car is overturned, due to Arthur's inexperience as a driver. Does Bill have a cause of action?

A. No. Arthur is only required to use a degree of care which would be reasonable to expect from a beginner and not from the ordinary driver. Having done his best, Arthur is not liable.

60. Q. Dan invites Paul, as his guest, to take a drive in his automobile. Paul accepts the invitation. Due to Dan's negligence in handling the car, it collides with a truck and Paul is hurt. Paul now seeks to hold Dan liable. May he?

A. Yes, in the absence of a state law to the contrary. Dan owes Paul reasonable care in driving the automobile, even though Paul is a guest and not a paid passenger. In at least half the states, however, by statute a guest may recover only where the driver has been guilty of "gross negligence," "recklessness" or "wilful or wanton misconduct."

61. Q. In the above case, suppose that Paul has been hurt by the combined negligence of Dan and the truck driver. Could Paul recover against both?

A. Yes.

62. Q. Arthur invites Bill, as his guest, to take a drive in Arthur's automobile. Bill accepts. Due to Arthur's negligence in handling the car, it collides with a truck and Bill is hurt. Arthur had been driving at an excessive rate of speed. Bill knew it and said or did nothing. The excessive speed is a

proximate cause of the collision in which Bill is hurt. Can Bill recover from Arthur?

A. Probably not. A guest must use due care for his own safety if he is to recover against another for injuries sustained by the other's negligence. Thus, if one rides with a driver known to be intoxicated, he is careless and cannot recover. Bill should have cautioned Arthur to cut down on his speed.

63. Q. Paul, owner of an automobile, parks it and leaves Dan, his friend, in the car in an intoxicated condition, with the ignition key in place. During Paul's absence, Dan attempts to drive the car away without the consent of Paul and negligently wrecks it. Paul now sues Dan. May he recover?

A. Yes. Dan's act is an intentional wrong and Paul may recover from Dan.

64. Q. Paul, a youngster of three years, is left unattended on a busy street by his parents. He suffers injuries when struck by an automobile. Do Paul's parents have a claim against the driver, assuming the latter is negligent?

A. Yes. Paul is too young to be held responsible for his parents' carelessness in leaving him unattended.

65. Q. Albert violates a traffic ordinance by parking his car on the wrong side of a street. Bertram, a five-year-old child, runs out from behind Albert's car and is killed by a passing automobile—through no fault of the driver. The evidence shows that if Albert's car had been legally parked, facing in the opposite direction, the obstacle to the child's vision and that of the driver of the passing car would have been as great as it was with Albert's car illegally parked. Do the parents of Bertram have a claim against Albert?

A. No. Since Albert's car would have been an equally great obstacle to the vision of both the child and the passing driver, whether facing in the proper direction or not, it is clear that Albert's act of parking his car the wrong way did not cause the accident.

66. Q. Arthur is seated on his doorstep, in front of which children are playing ball on the sidewalk. Burt is driving his car down the street at a legal rate of speed. He sees the children but does not slacken speed or bring the car under

more perfect control. One of the children darts into the street in pursuit of the ball. Arthur, seeing this and realizing that Burt will be unable to stop the car in time to avoid running down the child, dashes forward, pulling the child out of danger. However, he slips and falls under the car which runs over him, breaking his leg. Is the driver liable to Arthur?

- A. Yes. Burt is under a legal obligation both to slacken his speed and to obtain a better degree of control of his car when he first sees the children. In this he is negligent. Arthur's injuries are caused by his attempt to prevent the child from being so run down; therefore, Burt would be liable in damages to Arthur.

67. Q. You permit a sixteen-year-old girl to drive your car, knowing that she has never driven before. She drives the car with you in it. While doing so, she causes a collision with John's car. As a result, John is hurt. John files suit against you. Can he recover?

- A. Yes. It is negligence to permit one to use a thing or to engage in an activity under your control if you know, or should know, that such person is likely to use the thing, or to conduct himself in such a manner as to create an unreasonable risk of harm to others.

68. Q. You permit your chauffeur, who is in the habit of driving at an excessive rate of speed, to use your car to take his family to the seashore. While driving the car for this purpose, the chauffeur drives recklessly, injuring Paul, a pedestrian. Against whom has Paul a claim?

- A. Against both you and the chauffeur. You are negligent in permitting him to have the car when you know his habit of excessive speed. For whatever it is worth, the chauffeur may also be held.

69. Q. You hire a taxicab and, telling the driver that you have but ten minutes to catch your train, you direct him to ignore traffic signals. You offer him \$10 if he will get you to the station in time for the train. While the driver is speeding, the taxicab collides with Bill's car, causing personal injuries to him. Are you liable?

- A. Yes. You knew, or should have known, that obedience to your orders was likely to cause harm.

70. Q. Bill negligently runs you down in his automobile, breaking your leg. A few weeks after the accident, Bill becomes insane. May he still be sued for damages?

A. Yes. Insanity would be no defense, even if it were proved that Bill was insane at the time of the accident.

71. Q. While carefully driving your automobile along a public highway, you accidentally go over a fairly large hole, causing a tire to blow out. Because you are unable to properly control the car, it goes into a ditch. As a result, your wife strikes her head against the windshield. Does your wife have a claim against the city?

A. Yes. You may also recover damage for your tire.

72. Q. Albert is driving his automobile on a public highway. He is operating his car without a license and without having license plates attached to the car, but he is driving it with due care. While so driving, the car falls through an unsafe bridge and Albert is hurt. The condition of the bridge is due to the city's negligence, the city officials having had sufficient notice of the defect. Is the city liable?

A. Yes. It is true that Albert violated the law by not having secured the required license, but the car would have fallen through the bridge just as readily, whether it bore license plates or not.

73. Q. Driving his automobile at five miles per hour across a railroad track, Albert stalls on the crossing. The engineer on the approaching train carelessly fails to keep a lookout and a collision results. If he had done so, he would have discovered Albert's plight in time to avoid the accident. Can Albert recover, in spite of his contributory negligence?

A. Probably. The engineer, by using due care, might have avoided the accident, even though Albert contributed towards its happening. Having had the "last clear chance" to avoid the accident and failing to avail himself of it, the engineer is guilty of negligence and the railroad company would be liable.

74. Q. An engineer of a locomotive is driving it with the throttle open. On rounding a curve, he sees a trespasser lying on the

track a quarter of a mile away. The train runs over the man, killing him. Is the railroad liable?

- A. Yes. The engineer, by slackening the speed, could have stopped the train in time without injury to its passengers. In failing to do so, the engineer is guilty of negligence.

75. Q. Through the negligence of a railroad company, Bill sustains a compound fracture of his leg. Despite proper medical attention, Bill never regains the full use of his leg. After his doctors have advised him that he can again walk, the bad condition of his leg causes him to fall and break his arm while crossing a pavement which, had his leg been normal, he would have traversed safely. Bill now seeks to recover damages against the railroad both for the injury to his leg and for his broken arm. Can he?

- A. Yes. If a company is liable for an injury which impairs the physical condition of a person's body, it is also liable for harm sustained in a later accident which would not have occurred had the person's bodily efficiency not been impaired.

76. Q. Bill attempts to drive his automobile across a track, in full view of an approaching locomotive, in the belief that he has ample time to cross. Misjudging the train's speed, Bill's car is struck by the locomotive and Bill sustains serious personal injuries. He now seeks to collect damages from the railroad. Can he?

- A. No. By driving across the track in full view of an approaching locomotive, Bill is guilty of contributory negligence. His duty is to "stop, look and listen" before proceeding. By failing to do so he assumes the risk involved.

77. Q. Albert is a passenger in a motor bus operated by Ben. At an intersection Ben negligently drives the bus on the railroad tracks in front of an approaching train. The gates at the intersection are lowered as Ben goes on the track, making it impossible for him to proceed in either direction. The train crew sees the bus and its peril, but negligently fails to take precautions to stop the train quickly enough to prevent a collision. The train could have been stopped had its crew used care as soon as the danger was discovered.

Albert, the passenger of the bus, is hurt in the resulting collision. From whom may he recover, if anyone?

- A. He may recover from both Ben and the railroad. Ben is negligent in running the bus upon the tracks in front of the train. The train is negligent in running into the bus. The combined negligence of both caused Albert's injuries.

78. Q. In the above example, suppose the bus itself is injured in the collision. Can Ben, the driver, recover against the railroad?

- A. Yes. While he is negligent, his negligence leaves him in a position where he is powerless to avoid the accident. By the exercise of due care at the critical moment, the train could have avoided the catastrophe.

79. Q. A motorman of a street car sees a man walking down the tracks. Although he has time to stop the car, he realizes that if he does, the sudden stopping might injure the passengers on the crowded street car. When the man is first seen by the motorman there is a reasonable chance that he will himself observe the oncoming car in time to reach a place of safety. The motorman does not put on the emergency brakes. The man does not leave the tracks and is run down by the street car. Is the street car company liable?

- A. No. Here, the motorman is faced with the alternative of either running down the man, to whom he owes no duty at all except to refrain from actively harming him, or of possibly derailing the street car by a sudden stoppage, thus causing injury to its passengers to whom it owes the highest degree of care.

80. Q. After you board a street car, the car starts off with a sudden and violent jerk which throws you to the floor, injuring your back. Is the transit company liable?

- A. Yes. All carriers of passengers (buses, boats, trains, etc.), while not insurers of their passengers' safety, owe them the highest practical degree of care. Where a fall or other injury is caused by a sudden, severe and unusual jerk, the carrier is liable.

81. Q. Within what time from the date of the accident can you file suit?

- A. Generally, within three years.

FORM 63

GENERAL RELEASE

Know all Men by These Presents:

That I, *John Doe*, do hereby remise, release and forever discharge *Richard Roe*, his heirs, executors and administrators of and from all and manner of actions, and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatever in law or equity, which against the said *Richard Roe* I ever had, or have, or which my heirs, executors, administrators or assigns, or any of them, hereafter can, shall, or may have, for or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the end of these presents.

In Witness Whereof, I have hereunto set my hand and seal the 1 day of *June*, 19—.

JOHN DOE

Note: Never sign such a release without first consulting a lawyer.

CHAPTER XIV

Wills

A WILL, directing as it does the disposition of your property after death, is one of the most important documents you will ever be called upon to write. Therefore, in writing your will the following precautions should be observed, lest the will become involved in costly litigation or even, perhaps, be completely upset after your death. (1) Never write a will while under the influence of liquor. If it can later be proved that you did so, the chances are excellent that your will will not be worth the paper it is written on. (2) Avoid eccentric bequests as much as possible. Leaving a large sum of money to a favorite pet may be seized upon as evidence of a lack of mental capacity. If you insist on making a bequest which may later appear to be odd, state your reasons clearly for doing so, since the more rational your reasons, the less likelihood is there that your will may be upset. (3) Choose carefully the person who is to write your will. A will is a complex legal document and should be entrusted only to the hands of a lawyer. If you must write your own will, have it checked carefully by an experienced attorney to see that it *legally* expresses your wishes. (4) Make certain that the property you leave is accurately described and located; also include the interest in the property the recipients are to receive, together with their full names and addresses; if you do not, there is a chance that they may not receive it at all. (5) Name as executor someone in whom you have the utmost confidence. A good practice is to nominate two

executors—for example, your attorney and your closest relative in whom you have implicit trust. (6) Comply with the law of your particular state as to the presence of witnesses, method of attestation (witnessing), number of witnesses and their competency; select carefully those who are to witness your will, remembering that they may have to testify in court after your death. (7) After your will has been duly executed, do not allow any alteration unless absolutely necessary. Changes wrongfully made may upset the entire document. (8) Remember that marriage and the birth of a child revokes a will already made. (9) In revoking a will the safest method is to burn and completely destroy the document. Unless you intend it to take effect after your death, never leave an old will lying around where it may be discovered after your demise. (10) Don't try to cut off your spouse completely in your will. It can't be done, since she (or he) is entitled to a share of your estate, under statute law. Most states also provide that the surviving spouse may elect to take, either under the will or as the local statute permits. If, under a statute, your wife is entitled to a third of your estate, she will still receive her share, even though you leave her nothing in your will. (11) Last, but by no means least, keep your will in a safe place. A sound practice is to entrust the document to the probate court for safe-keeping.

1. *Question:* What is a will?

Answer: A will is an instrument by which a person makes a disposition of his property to take effect after his death.

2. *Q.* What happens to your property if you die intestate—that is, without a will?

A. Instead of being disposed of according to your wishes, your property is distributed in accordance with the law of your particular state which may be contrary to your express wishes. When you leave a will, your estate is managed by the executor named by you. When you die without a will, the court will appoint an administrator, usually your closest

relative, who might not be your personal choice had you given the matter some thought.

3. Q. What is a testator?
A. A testator is a man who has made a will.
4. Q. What is a testatrix?
A. A testatrix is a woman who has made a will.
5. Q. What is meant by a codicil to a will?
A. A codicil is a supplement or addition to a will, made by the testator or testatrix, by which the dispositions in the will are explained, added to or altered.
6. Q. What is a devise?
A. A devise is real property passing under a will—as, for example, a house.
7. Q. What is a devisee?
A. A devisee is the person who takes real property under a will.
8. Q. What is a legacy?
A. A legacy is personal property passing under a will, especially money.
9. Q. What is a bequest?
A. A bequest is any form of personal property passing under a will—as, for example, a collection of books, a piano, etc.
10. Q. What is a legatee?
A. The person who takes personal property under a will.
11. Q. What is a beneficiary under a will?
A. A person who receives a benefit or advantage under a will.
12. Q. What is the difference between an executor and administrator of a will?
A. An executor is one named in the will by the testator to carry out its provisions. An administrator, on the other hand, is one appointed by the court to administer the estate of the deceased where there is no will.
13. Q. In making a will, whom should you generally appoint as executor?
A. Your attorney, if you have one, or your wife, husband or child to act as co-executor with your lawyer. It is a good idea to include in your will an alternate executor, to be appointed upon the death of the executor named by you.

14. Q. May an executor refuse to accept appointment under a will?
A. Yes.
15. Q. What happens when the executor named in the will dies before the testator?
A. A new executor should be named by the testator. Should the executor die after the testator, a new executor will be appointed by the court where the will does not provide an alternate.
16. Q. Who is usually appointed administrator?
A. Ordinarily, preference is given in the following order: the widow or widower; son or daughter; grandchild, father or mother, brother or sister; and finally, any other next of kin, preferably the one taking the largest share of the estate.
17. Q. How is an executor named in the will, or an administrator appointed by the court, paid?
A. The executor or administrator is paid a commission which is deducted from the estate. Though statutes vary in different states, the usual commission is up to ten per cent of the value of the estate.
18. Q. May an executor or administrator be removed from office?
A. Yes, if he reveals himself to be corrupt or manifestly incompetent.
19. Q. At what age is a person legally competent to make a will?
A. In Alabama the age is twenty-one years for disposing of real estate and eighteen years for disposing of personal property. The age is twenty-one in Alaska and Arizona for both real and personal property. In Arkansas anyone over twenty-one may leave real and personal property by will; anyone over eighteen may bequeath personal property. California requires a person to be eighteen years or over to dispose of real estate and personal property. Colorado requires that the person making a will to dispose of real property be twenty-one years; those seventeen years of age may make a valid will bequeathing personal property. In Connecticut anyone eighteen years old may make a valid will of both real and personal property. In Delaware one must be

twenty-one years of age or over. In the District of Columbia males over twenty-one and females over eighteen may make a will disposing of real and personal property. Those eighteen years of age may make a will disposing of both real estate and personal property in Florida. In Georgia the minimum age is fourteen years for disposing of both real and personal property. Those over twenty-one may will both real and personal property in Hawaii. In Idaho the minimum age is eighteen for both classes of property. Illinois requires that males be over twenty-one, females eighteen years or more to dispose of both real and personal property. In Indiana, Iowa, Kansas and Kentucky those twenty-one years or over may will real and personal property. Any person sixteen years or over in Louisiana may make a will disposing of real and personal property. In Maine the minimum age is twenty-one years, but any married woman or widow of any age may dispose of real and personal property by will. In Maryland the minimum age for men is twenty-one, for women eighteen, regarding both real and personal property. The minimum age in Massachusetts and Michigan is twenty-one years for disposal of both real and personal property. The minimum age in Minnesota is twenty-one years for men, eighteen years for women as to all classes of property. In Mississippi the minimum age is twenty-one for disposal of all property. In Missouri all persons twenty-one years of age and over may make a valid will of any kind of property; males over eighteen may bequeath personal property. In Montana those over eighteen may dispose of real and personal property. The minimum age in Nebraska is twenty-one years for all kinds of wills, though a married woman, irrespective of age, may make a valid will. In Nevada real and personal property may be disposed by those eighteen years and over. New Hampshire requires that the person making a will be twenty-one years of age, or married. Any person over twenty-one years may will real and personal property in New Jersey and New Mexico. In New York the minimum age at which a person may will real property is twenty-one; the minimum age for willing personal property is eighteen. In North Carolina the minimum age for real and personal property is twenty-one. In

North Dakota the minimum age is eighteen for disposing of both real and personal property; in Ohio twenty-one for both real and personal property; in Oklahoma eighteen for disposal of real and personal property. Oregon permits men twenty-one years and over and women over eighteen years to will real and personal property. To dispose of any kind of property by will in Pennsylvania one must be over twenty-one years of age. In the Philippine Islands the minimum age for willing real and personal property is eighteen years. Puerto Rico bars all persons under fourteen years from making valid wills. In Rhode Island one must be twenty-one years to will real and personal property, and eighteen years to bequeath personal property. Anyone twenty-one years or over may will real and personal property in South Carolina; fourteen-year-old males and twelve-year-old girls may will personal property. In South Dakota a person must be over eighteen years to dispose of real and personal property. In Tennessee a will of real estate may be made only by those twenty-one years or more; personal property, however, may be bequeathed by males fourteen years old and females over twelve years. One must be over twenty-one to dispose of real and personal property in Texas and Vermont. In Utah any person over eighteen may similarly dispose of property. Virginia requires that the person making a will of real and personal property be twenty-one years or over; those over eighteen years may bequeath their personal possessions. A person making a will of real and personal property in Washington must be twenty-one years of age in the case of men, eighteen years in the case of women. In West Virginia the law allows any person except infants to dispose of their property, whether real or personal. The rule in Wisconsin is that anyone over twenty-one, or any married woman over eighteen, may will real and personal property. In Wyoming anyone over twenty-one may dispose of all his property by will.

20. Q. How many witnesses are required to execute a valid will?

A. Two witnesses, in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky,

Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Three witnesses are required in Connecticut, Georgia, Maine, Massachusetts, New Hampshire, South Carolina and Vermont.

21. Q. What is a nuncupative will?

A. This is an oral will made during the last illness of the deceased, in the presence of witnesses, respecting the disposition of his personal property after death. Soldiers in actual service and mariners at sea may verbally dispose of their wages and personal property to any amount, provided they are in actual fear or peril of death, or in expectation of immediate death from an injury received that day. Most states recognize some form of oral will. But as to this, see Question 22.

22. Q. In which states are oral wills legal?

A. Alabama—A verbal or oral will is valid only when personal property bequeathed does not exceed \$500. Such a will must be made during the last illness of the deceased, at his dwelling or where he resided ten days or more, except when the testator is taken ill away from home and dies before his return. It must be shown that the deceased called upon persons present, or some of them, to bear witness that the statement is his will. Oral wills made by soldiers and sailors in actual service or mariners at sea are also valid in Alabama.

Alaska—An oral will is permitted if the deceased's words, or substance thereof, are reduced to writing within thirty days after they are spoken and the writing probated after fourteen days and within six months after such words are spoken. Any mariner at sea or any soldier in military service may dispose verbally of his wages or other personal property.

Arizona—A verbal will is allowed if made in the last sickness of the deceased, where property does not exceed \$50 in

value. Three competent witnesses must testify that the testator called on some person to take notice and bear testimony that such is his will, and that the testimony, or its substance, was reduced to writing within six days after the making of such will. Where this is done, the amount that may be disposed of is without limit.

Arkansas—An oral will must be made at the time of the last illness of the deceased in the presence of at least two witnesses. The amount is limited to \$500. Such a will must be proved not less than twenty days nor more than six months from the date thereof; it must be reduced to writing and signed by the witnesses within fifteen days after the will is made.

California—Amount limited to \$1,000. An oral will must be proved by two witnesses present at the time it was made, one of whom was asked by the testator, at the time, to bear witness that such was his will. In addition, the deceased must have been, at the time, in actual military service in the field or doing duty while at sea. Finally, the deceased must have been in actual contemplation, fear or peril of death, or in expectation of immediate death from an injury received that same day. The verbal statement of the deceased must be reduced to writing within thirty days after the making.

Delaware—An oral will is valid if confined to personal property not exceeding \$200 in value. It must have been pronounced in the last illness of the deceased before two witnesses, be reduced to writing within three days, attested by the signatures of the witnesses, provided the testator dies before the expiration of the said three days or subsequently becomes incapable of making a will.

District of Columbia—An oral will is invalid, except in the case of soldiers and sailors in actual military service who may dispose of wages and personal property by word of mouth. Such a will must be proved by two witnesses and reduced to writing within ten days after its making.

Florida—It must be proved by three witnesses present at the time of making. The oral will must have been made during the deceased's last sickness and be reduced to writing within six days from making. Personal property only may be disposed of in this way.

Georgia—It must be made during the last illness of the deceased at the place where he resided for at least ten days preceding the declaration, except in case of sudden illness and death away from home. Three witnesses are necessary to prove such a will.

Idaho—It must be reduced to writing within thirty days after making. The will must be probated not less than fourteen days after the testator's death.

Illinois—An oral will is valid for transfer of personal property only, if reduced to writing within twenty days after the making, or within ten days after the deceased's death. It must be proved by at least two disinterested witnesses present at the time of its making.

Indiana—It must be made in the testator's last illness, be witnessed by at least two people and reduced to writing within fifteen days after the words are spoken. Valid only to extent of \$100's worth of personal property.

Iowa—Personal property up to \$300 may be disposed of by a verbal will if witnessed by two competent persons. Those in actual military or naval service may dispose of all their personal estate orally.

Kansas—To be valid, the verbal will must be reduced to writing and witnessed by two disinterested persons within ten days after words are spoken. It must be proved that the testator called upon some person or persons present when words were spoken who bore witness that the words were his last will.

Kentucky—Only a soldier in actual service or a mariner at sea may dispose of personal effects verbally, provided it is done ten days before death, in the presence of two competent witnesses and reduced to writing within sixty days after the words are spoken.

Louisiana—An oral will must be witnessed in the presence of a Notary Public by three persons residing in the place where the will is executed, or by five persons not residing in the place.

Maine—The oral will is allowed when made in the last illness of the testator, at his home or at the place where he resided ten days before making it. Maximum amount which may be disposed of in this way is \$100. The will must be

proved by three witnesses present at the time of making, who were requested by the testator to bear witness that such was his will. If the words are not reduced to writing within six days after being spoken, they must be proved in court within six months. A soldier in actual service or a mariner at sea may verbally dispose of his personal estate.

Maryland—A verbal will is valid only as to soldiers in actual service or mariners at sea who may dispose of their wages, movables and personal property.

Massachusetts—Same rule as in Maryland.

Michigan—The maximum amount is \$300. The will must be proved by two competent witnesses; this applies to soldiers in actual military service and mariners on shipboard.

Mississippi—It is valid only when made during the testator's last illness. The maximum amount is \$100, unless it is proved by two witnesses that the testator called them to bear witness to his will. Such a will cannot be proved after six months unless reduced to writing within six days of speaking. There is a soldier and sailor provision.

Missouri—The maximum amount to be disposed may not exceed \$200; it must be proved by two witnesses and that the testator, in his last sickness, at his home, called some person to witness the will. Proof of such will must be given within six months after words are spoken or substance of words reduced to writing within thirty days. Wills of soldiers and sailors are governed by the common law.

Montana—An oral will is valid when proved by two witnesses present at the making thereof, one of whom, at least, was asked by the testator to bear witness that such was his will. The maximum value is set at \$1,000; the testator at the time must have been in actual military or marine service and the will must have been made in the expectation of immediate death from injury received that day; the will must be proved within six months and not less than fourteen days after the death of the testator.

Nebraska—The maximum amount is \$150. The will must be proved by three witnesses present at the making and that the testator called them to witness his oral will; must be made during testator's last illness at home or while taken sick away from home. Unless reduced to writing

within six days after oral declaration, will is not allowed. These rules are not applicable to soldiers in service and mariners on ships.

Nevada—The maximum value is \$1,000; must be proved by two witnesses present at making thereof; must be made during last illness and proved not less than fourteen days nor more than three months after words are spoken.

New Hampshire—The maximum value is \$100; must be declared in presence of three witnesses who were requested by testator to bear witness thereto, or be made during testator's last illness, at his usual dwelling place or away from same if taken ill while away from home and died before his return, or unless a memorandum of the oral will was reduced to writing within six days.

New Jersey—An oral will bequeathing personal property exceeding \$80 is invalid unless it is proved by the oaths of at least three witnesses present at the making thereof and unless the testator requested the persons present to bear witness to his verbal will or words to that effect; the will must be made during the testator's last illness, in his house or where he was a resident for ten days or more, except where the deceased was surprised or taken sick while away from his home and died before returning to his dwelling place.

New Mexico—An oral will is not valid except when made by a soldier in actual service or a mariner on shipboard.

New York—Only soldiers in service and mariners at sea may bequeath personal property by oral will; such a will must be made within the hearing of two persons and its execution proved by at least two witnesses.

North Carolina—An oral will must be proved by at least two witnesses present at time verbal will was made; the will must have been made during the testator's last sickness and in his own residence, or where he had previously resided.

North Dakota—The maximum amount is \$1,000; must be proved by two witnesses who were present at making; the deceased must have been in actual military service in the field or doing duty on shipboard at sea, in either case, he must be in fear or peril of immediate death from injury received the same day that the will was made.

Ohio—The oral will must be made in the last sickness of the testator; it must be reduced to writing and subscribed by two competent witnesses within ten days after the verbal declaration.

Oklahoma—The maximum amount is \$1,000; must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to act as a witness. In addition, the testator must have been in actual military service in the field or doing duty on shipboard at sea and must have been in actual contemplation, fear or peril of death, or in expectation of immediate death from an injury received that same day.

Oregon—Oral wills apply only to soldiers in service and sailors at sea.

Pennsylvania—An oral will is valid only if made during testator's last illness, in his own home or one in which he resided for at least ten days before making it, or where he is taken sick while away from home and dies before returning. If property bequeathed is over \$100 in value, the oral will must be proved by two witnesses present at the time of the making thereof, and that the testator requested persons present to witness his will; words spoken must be reduced to writing within six days after they are spoken, but no proof of the words spoken can be received after six months from the speaking thereof unless they are reduced to writing.

South Carolina—An oral will disposing of personal property in excess of \$50 is invalid unless proved by the oaths of three or more witnesses who were present when the will was made and requested by the testator to witness his will. The will must be made in the testator's last illness and in his house or place where he died; proof of such will cannot be made after six months from the time the words were spoken unless reduced to writing within six days after the making of such will and then not after one year.

South Dakota—The maximum amount is \$1,000; must be proved by two witnesses present at time words were spoken, one of whom was requested by the testator to serve as a witness; the testator at the time must have been in actual military service in the field or doing duty on shipboard at sea; in addition, he must be in actual contemplation, fear or

peril of death, or at the time must have been in expectation of immediate death from an injury received the same day; the oral will must be reduced to writing within thirty days after the words were spoken.

Tennessee—An oral will is unenforceable if over \$250 in value, unless proved by two disinterested witnesses present at the time the words were spoken; witnesses must have been requested by the testator himself to bear witness thereto; the will must have been made in the testator's last illness in his own home or where he had previously resided at least ten days, except where he was taken sick while away from his home and died before returning.

Texas—An oral will is valid if made during the last illness of the deceased; must be made at his home, unless he was taken sick away from home and dies before returning; no oral will allowed when personal property bequeathed exceeds \$30 in value unless proved by three credible witnesses; must be proved within fourteen days from testator's death and not after six months from the date of speaking, unless committed to writing within six days therefrom.

Utah—Where the estate is not in excess of \$1,000, an oral will may be admitted to probate at any time after deceased has been dead ten days and within six months after the words are spoken; words must be reduced to writing within thirty days after they are spoken.

Vermont—An oral will may not pass personal possessions exceeding \$200 in value; memorandum in writing must be made by a person present at the time of the making of said will within six days from making of the oral will.

Virginia—Only soldiers in military service and mariners at sea may dispose of personal property by oral will.

Washington—An oral will is allowed if personal estate does not exceed \$200; it must be made during testator's last illness and must be proved by two witnesses who were requested by the testator to witness his will; must be reduced to writing.

West Virginia—Only soldiers and sailors in actual service may dispose of personal property by verbal will.

Wisconsin—A verbal will disposing of an estate in excess of \$150 in value is of no effect unless proved by the oath of

three witnesses present when the will was made who were requested by the testator to witness it; it must be made during the last illness of testator in his home or dwelling or where he resided for ten days prior to the making of the will, except when he was taken sick while absent from his home and died before returning.

23. Q. While on maneuvers, a soldier is fatally stricken with a heart attack. A few minutes before he dies, he orally tells the commanding officer that he wants his buddy, John, to have his diamond ring. Is this is a valid will?

A. Yes. Verbal wills of soldiers in actual service and sailors at sea are generally valid. In many states such wills are recognized as legal without any specified number of witnesses.

24. Q. What is a holographic will?

A. A holographic will is one written *entirely* by the hand of the testator. It may be written in pencil or ink, or partly in both. It may take the form of a letter or a notation or a note. It must be entirely written, signed and dated by the testator. Not all states recognize such wills, nor are witnesses required in all jurisdictions allowing holographic wills. But as to this, see the following question.

25. Q. In which jurisdictions are holographic wills recognized as legal?

A. Alaska: no witnesses.

Arizona: no witnesses.

Arkansas: three disinterested witnesses.

California: no witnesses.

Connecticut: three witnesses.

Idaho: no witnesses.

Kentucky: no witnesses.

Louisiana: no witnesses.

Montana: no witnesses.

Mississippi: no witnesses.

Nevada: no witnesses.

New York: holographic wills by soldiers or sailors while in actual military service, or by a mariner while at sea, are valid during the war. Such wills are unenforceable and invalid upon the expiration of one year following discharge from military service, provided testator still retains capacity

to execute a valid will. Where, after his discharge from service, a testator still lacks such capacity, the holographic will is valid and enforceable until the expiration of one year from the time capacity is regained.

North Carolina: must appear that the will was found among the valuable papers of the testator. Testator's handwriting must be proved by three witnesses.

North Dakota: no witnesses.

Oklahoma: no witnesses.

Puerto Rico: no witnesses.

South Dakota: no witnesses.

Tennessee: substantially the same provisions are in force as in North Carolina.

Texas: no witnesses.

Utah: no witnesses.

Virginia: no witnesses.

West Virginia: no witnesses.

26. Q. John writes a letter to a sister in which, after referring to land and his intention to build thereon, he tells her "If I die or get killed in Texas, the place must belong to you and I would not want you to sell it." Is this a good will?
- A. Yes. This is a holographic will and is valid in those states in which such wills are legal.
27. Q. After the testator's death, a letter is found which reads as follows: "Many accidents may occur to me which might deprive my sisters of that protection which it would be my duty to afford; and in that event I must beg that you will attend to putting them in possession of two-thirds of what I may be worth, appropriating one-third to Mrs. Jones and her child, in any manner that may appear most proper." Is this a good will?
- A. Yes. A will may take the form of a letter if signed and properly witnessed.
28. Q. After John's death, a paper is found which reads as follows: "This is good to Miss Ruby Cox for \$600, as payment for care and attendance rendered by her to me in my last sickness; this \$600 is to be collected out of my estate, providing, however, I die a bachelor." Can Ruby collect the \$600?
- A. Yes. This is a good will, since it is conditioned on John's

dying a bachelor and was not to take effect until after his death.

29. Q. To be valid, must a will be signed by the testator?

A. Yes. It must be signed either by the testator or by some person in his presence, and at his express direction and request.

30. Q. Is a will otherwise good if signed by a cross or mark?

A. Yes. What constitutes a sufficient signature largely depends on the custom of the time and place, the habit of the individual and the circumstances of each particular case.

31. Q. A testator begins to sign his name, writes the syllable "Rob," then desists because of physical weakness. Would his failure to complete his name make the entire will void?

A. Yes. The testator must write all that he intended to write in order that there may be a sufficient signing. In the above case, for example, it could be argued that the reason the testator did not complete his signature is that he changed his mind after writing "Rob."

32. Q. A will, written wholly in the handwriting of the testator, begins, "I, John Doe, declare this to be my last will." The testator's name appears nowhere else in the will. The will is enclosed in a sealed envelope on which is written, in the testator's handwriting, "My will. John Doe." Is this a valid will?

A. No. Because it is not signed by the testator.

33. Q. What is meant by attestation?

A. To attest a will means to witness it at the request of the testator, the party making it, and to sign one's name to it as a witness.

34. Q. An attorney who has drawn a will proposes to the testator that the lawyer and his stenographer witness it. Calling her from an adjoining room into his office, the lawyer and his stenographer both sign the will in the testator's presence and without objection from him. Is this a valid will?

A. Yes. The general rule is that the testator must request the witnesses to attest the will. This request may be made either expressly by the testator or by another in his behalf, or may be inferred from his conduct and from all the facts and circumstances attending the witnessing. When the testator al-

lowed the lawyer and his stenographer to witness the will, he gave his consent to their attestation.

35. Q. May one who is to be a beneficiary under a will be a witness to it?

A. No. It is generally provided by statute that a bequest to a subscribing witness shall be void but that the will shall be otherwise valid.

36. Q. Is it necessary that witnesses see the testator sign the will?

A. No, in the absence of a statutory requirement. However, it is frequently provided by statute that the testator shall either sign the will in the presence of witnesses, or shall acknowledge his signature before them. Any words, acts or conduct of the testator which, reasonably interpreted, amount to a recognition of the signature as his, in the presence of witnesses who are aware of such words, acts or conduct, is a sufficient acknowledgment.

37. Q. A will is so folded that the testator's signature is invisible to the witnesses who, nevertheless, sign the document. Is this a sufficient acknowledgment of the testator's signature?

A. No. The witnesses must see the testator's signature.

38. Q. Is it necessary that witnesses sign at the end of the will?

A. No, not unless a statute specifically provides for it. The attestation need not be in any particular place, provided there is no evidence that the witnesses, in signing their names, have the intention of attesting the document. To avoid any question, however, it is wise to have witnesses sign at the end of the will.

39. Q. Is it necessary that witnesses to a will sign it in the presence of the testator?

A. Generally, yes. This requirement is met when the witnesses sign in such a way that the testator can see the act of attestation.

40. Q. While a testatrix is in one room, her will is signed by witnesses in an adjoining room. The testatrix can observe the signing of the will if she looks. Is this sufficient?

A. Yes. Provided the witnesses are so situated that the testatrix can see them when they sign, it is immaterial where the witnesses are.

41. Q. Tom is stone deaf. He executes his will in the office of his lawyer who draws it in accordance with his instructions. The attorney brings in two secretaries to act as witnesses. After Tom reads the will and signs it, the attorney shows him a pad on which he writes: "Is this your will and do you wish Miss Smith and Miss Jones to witness it for you?" Tom nods his head, whereupon the lawyer hands the will to the secretaries who attest it, signing their names as witnesses. The secretaries see Tom nod but neither see what is written on the pad. Is the will properly executed?
- A. Yes. Unless the statute expressly requires it, witnesses need not know the nature of the instrument they are signing; in this case, it is sufficient that they know they are witnessing some instrument which Tom has signed and means to acknowledge as his own.
42. Q. An ailing testator signs his will, but before the witness can affix their signatures, he falls into a state of unconsciousness. The witnesses sign, nevertheless. Is such a will valid?
- A. No. The witnesses must sign in the testator's presence while he is conscious.
43. Q. What is meant by the capacity to make a will?
- A. What constitutes capacity to make a valid will is defined by the laws of the various states; by such laws all persons except infants and those of unsound mind have the capacity to execute a valid will.
44. Q. A person makes a will while suffering severely from cancer. The will is later sought to be upset on the ground that the testator lacked the capacity to make a valid will. Would the court, in the absence of other proof, permit the will to be upset?
- A. No. Capacity to make a will may exist, even though the testator be old, weak and ill, even to the point of death, at the time he executes the will, as long as his mind functions normally.
45. Q. A testator suffers from an incurable disease which his physician ceases to treat because he can do nothing to arrest its progress. On the day he signs his will, he lies helpless in his

bed, unable to carry on conversation or to understand questions put to him. Does this indicate capacity to make a will?

A. No. Here, obviously, the testator is unable to comprehend the significance of his act in signing the will. If proved, this fact will probably suffice to upset the document.

46. Q. In his will, a testator directs that part of his intestines shall be made into violin strings and the rest of his body vitrified into lenses, explaining that he has an aversion to funeral pomp and wishes his body to be made useful to mankind. Are these eccentric instructions sufficient to upset a will on the ground that the testator lacks mental capacity?

A. No. Mere eccentricity, although proper to be considered as bearing thereon, does not of itself amount to insanity.

47. Q. A testator who is chronically insane makes a will during a lucid interval. Is such a will valid?

A. Yes, although the existence of a lucid interval will be exceedingly difficult to prove. If, however, such a lucid interval could be proved, the will might be sustained.

48. Q. What constitutes "undue influence" in the writing of wills?

A. The exercise of such influence over the testator as to control his mental operations, inducing him to dispose of his property in a way which he would not have done had he been left free to act according to his own wishes. Undue influence deprives the person making a will of his free agency, and if such influence is proved, the instrument will be upset. Mere advice, argument or persuasion, however, which do not deprive the testator of his mental freedom, are not considered undue influence.

49. Q. What is the effect of a will obtained by undue influence?

A. Such a will is void to the extent that it is the result of such influence.

50. Q. Due to the constant and repeated urgings of his wife, a testator who is ill makes a will leaving all his property to his wife, ignoring completely his children by a former marriage. Is such a will valid?

A. Probably not. It is true that the will was made voluntarily, but it was made clearly for the sake of the respite or peace

of mind gained. Very likely such a will could be upset on the ground that it was obtained by undue influence.

51. Q. A son urges his mother to make a will in his behalf which she later does. Is such a will considered to be obtained by undue influence?
- A. No. A son has a right to urge his mother to make a will in his behalf, and if the only effect of such promptings is to arouse her affections or to appeal to her sense of duty, they are unobjectionable.
52. Q. A bedridden testator is led to make a certain will in consequence of a threat by his wife that she will leave him if he refuses to do so. Is such a will considered to be obtained by undue influence?
- A. Yes.
53. Q. An aged and feeble testator makes a will disinheriting a faithful son at the demand of his wife with whom the son has quarreled. Is such a will valid?
- A. No. In this case, the wife would be considered legally as having exercised undue influence over her husband.
54. Q. May a blind or deaf person make a valid will?
- A. Yes. Proof, however, must be given that the contents were made known to the testator.
55. Q. Tom, a habitual drunkard, executes a will, properly witnessed, leaving his property to his wife and children. Is such a will good?
- A. Yes. Intoxication does not of itself invalidate one's will. Courts incline to sustain a drunkard's will when it is just and natural and the circumstances of execution favorable.
56. Q. A testator executes one will, then afterwards executes a second one. He later writes a third will, declaring that the first one shall be his last will if he dies before a given date; otherwise the second one is to be his last will. Is such a will (or wills) valid?
- A. Yes. Wills may be written so as to take effect in the alternative with reference to a stated contingency or happening of an event.
57. Q. In his will, a testator leaves a legacy of \$1,000 to John, forgetting to add John's last name. Is such a legacy good?

A. Yes. Omissions may be supplied where the context of the will indicates a name or thing has been inadvertently left out. Where both names of a legatee or devisee are omitted in the will, oral evidence as to their identity may not be introduced to supply the missing blanks. In this case, evidence is admissible to establish the identity of John's last name.

58. Q. A will is read over to a testator who intends that a legacy shall be given to a certain person. This individual's name is unintentionally omitted in the will, the omission being unobserved by the testator. May the unnamed beneficiary claim a share under the will?

A. Where the contents of the will are actually communicated to the testator, the will takes effect as written and no evidence can be received to add to or subtract therefrom. Hence, the unnamed beneficiary has no claim.

59. Q. May you cut off your spouse completely in a will?

A. No, in most states. As a rule, you must leave your spouse, by will, at least the same part of the estate which she (or he) would have received if there had been no will. In many states, she may refuse to accept what you provide for her in your will, taking advantage of her statutory rights instead, unless you give her all the law requires.

60. Q. A testator, on slight but insufficient proof, clings to the belief that his wife is unchaste and one of his daughters illegitimate. In his will, he completely disinherits that daughter. Can the will be upset?

A. No. An ill-founded belief, not actually amounting to insanity, does not destroy capacity to make a will. Where one indulges in an aversion, however harsh, which is the conclusion of a reasoning mind, on evidence, no matter how slight or inaccurate, one's will cannot on that account be overturned or upset.

61. Q. What happens to the bequests in your will where there isn't enough money in the net estate to pay them all?

A. All the bequests are reduced proportionately, unless you have made specific provision that some are to be preferred over others.

62. Q. A will provides that, after the payment of the testator's debts, all the debts of his mother are to be paid out of "my estate." Is such a clause binding on the testator's heirs?
- A. No. Only the testator's debts need be paid.
63. Q. A testator leaves John a valuable diamond ring. John, however, dies before the testator, leaving two children. May John's children claim the diamond ring after the testator's death?
- A. No. John's heirs get nothing, the property passing either under the residuary clause (a clause which passes the testator's estate left after payment of debts, costs of administration and specific bequests), or will be distributed as intestate property—that is, as if no will had been made and in accordance with the laws of the testator's state.
64. Q. What is meant by probating a will?
- A. To probate a will means to prove before some officer or tribunal, authorized by law, that the document offered is the last will and testament of the deceased person whose act it is alleged to be; that it has been executed, attested and published as required by law, and that the testator was of sound and disposing mind. In short, when a will is probated its validity is established. Until a will is duly probated or proved, courts will not recognize any powers of the one named in the will as executor, nor any one claiming under the will, such as a devisee or legatee. Where probate is refused, it is presumed that the deceased died intestate (without a will).
65. Q. Two beneficiaries under a will enter into an agreement whereby one of them agrees that he will not contest its probate. Is such an agreement binding?
- A. Yes, if made with full knowledge of all the facts and risks involved.
66. Q. How may a will be revoked?
- A. A will may be revoked or cancelled at the pleasure of the testator. Ordinarily, it is revoked by mutilation, by a subsequent writing revoking the will, or by certain changes in the circumstances and conditions of the testator, from which a revocation will be implied by law.

67. Q. May a written will be revoked orally?

A. No.

68. Q. A testator throws his will into a fire, intending to destroy it. The will, slightly singed, is snatched from the flames by another person. Is the will still valid?

A. No. Any visible burning of the will, no matter how slight, if caused with the intent to revoke, is sufficient to constitute a revocation. Mutilation, which is one of the recognized methods of revoking a will, includes any impairment of the material upon which the will is written, such as tearing, burning, etc.

69. Q. A testator makes an unsuccessful attempt to burn his will. He dies a few minutes later. Has his will been revoked?

A. No. Unsuccessful attempts to burn a will effect no revocation; neither does a burning of the envelope containing the will, providing the latter remains untouched.

70. Q. John brings a will to a blind testator at the latter's request. The testator, after feeling the seals of the envelope in which the will is enclosed, requests John to throw it into the fire. John, pretending to do so, substitutes another paper for the will, calling the testator's attention to the odor and the crackling of the burning paper. The testator dies in the belief that his will has been revoked. Has it?

A. No. The revocation must be in a manner prescribed by law, not verbally.

71. Q. A testator tears up his will, under the mistaken impression that he has not properly executed it. He orders a new and similar writing to be made out but dies before executing it. May the torn instrument be introduced as the will?

A. Yes. It is admissible on the ground that an intent to revoke was lacking, since the testator destroyed the will while laboring under a misapprehension.

72. Q. A testator executes a will in duplicate, keeping one copy for himself and depositing the other with his bank. Shortly afterward, the testator destroys his copy of the will and dies before he can request the bank to destroy the copy it holds. Has the testator revoked the will?

A. Yes. If a will is executed in duplicate, a mutilation by the testator of that part in his own custody constitutes a revoca-

tion of both copies. The law presumes that the mutilation of the one duplicate was done with the intent to revoke both copies.

73. Q. A testator, while sane, makes a valid will. He becomes insane and destroys the will. Is his will still good?

A. Yes. As much mental capacity is required to revoke a will as to make one. The testator's insanity deprived him of the necessary intent to revoke.

74. Q. A testator executes two wills. Wishing to revoke one of them, he destroys the wrong document by mistake. Does his act revoke the paper he intended as his will?

A. No. There is no mutilation of the will, since the testator did not intend to revoke it, having torn it up erroneously.

75. Q. Does a mutilation of a will, induced by undue influence, constitute a revocation?

A. No, since the testator is not acting of his own volition but under the influence of another.

76. Q. A testator cancels his signature and those of the subscribing witnesses, accompanying the act with this memorandum: "In consequence of the death of my wife it becomes necessary to make another will." He dies before such will is made. Is his first will revoked?

A. Yes. The revocation of the will is absolute and complete, the testator clearly indicating such intention by cancelling the signatures and leaving a memorandum to that effect.

77. Q. In his will, a testator leaves his house to a brother. A few weeks before the testator's death, he sells the house to a third party. Can the brother still claim the house?

A. No. When the testator sold the house the will was revoked—as far, at least, as the house was concerned.

78. Q. You make a will prior to your marriage. A few years after the marriage, a child is born. Is your will, executed before the marriage, valid?

A. No. Marriage, followed by the birth of a child, absolutely revokes the will and your wife and child will inherit your property in the manner prescribed by law in cases of intestacy—i.e., where no will is left—rather than in accordance with your personal wishes.

79. Q. You make a will after your marriage, but in it you mention nothing about children. A few years later, a child is born. Will your child inherit upon your death?
- A. Yes. In most states the birth of a child does not work the entire revocation of a prior will; it does so only to the extent of the interest which the child would have taken had there been no will. A wise precaution is to make a new will, or codicil, upon the birth of each child.
80. Q. A few years after his marriage, a testator adopts a child. Is his will revoked to the same extent as if the child were born in wedlock?
- A. Yes, in many states. When an adopted child is given the status of one born in wedlock, his adoption has been held to revoke a prior will as effectually as would natural children of the marriage.
81. Q. What is the effect of the birth of illegitimate children upon a prior will?
- A. It depends wholly upon the statute of each particular state. As a rule, if not recognized or in some way made legitimate under the statute, the birth of an illegitimate child after a will is executed has no effect and the illegitimate child will not inherit.
82. Q. A testator makes a will leaving all his property to his wife. A few years later, he secures a divorce. Before he can make a new will he dies. Does the divorce revoke the will so as to prevent the ex-spouse from inheriting?
- A. No. Revocation of a previously executed will is not implied by law from the fact that the testator obtains a divorce. But where the divorce is accompanied by a property settlement, it is *sometimes* held that the change of circumstances is sufficient to cause an implied revocation of a prior will.

FORM 64

WILL

I, *John Doe*, a resident of the city of *Baltimore*, state of *Maryland*, and residing therein at *5 South street*, being over the age of twenty-one (21) years and of sound and disposing mind and memory, and not acting under

duress, menace, fraud, or undue influence of any person whomsoever, do make, publish and declare this my last will and testament, in the manner following to wit:

1. I direct that all my debts, including my funeral expenses, expense of my last illness and the expenses of the administration of my estate, be paid by my executor, hereinafter named, out of the first moneys coming into its hands and available therefor.

2. I hereby declare that I am married; that my wife's name is *Jane Doe*; and that I have but two (2) children, a son, *Thomas*, and a daughter, *Mary*.

3. I give, devise and bequeath all of the rest and residue of my property, after the payment of the debts and expenses provided for in paragraph 1 hereof, whether such property be real, personal or mixed, of whatsoever kind or character and wheresoever situated, to my wife,

4. I hereby nominate and appoint Bank of *Maryland* the executor of this, my last will and testament.

Lastly, I hereby revoke all former wills and codicils to wills heretofore by me made.

In Witness Whereof, I have hereunto set my hand and seal this 1 day of *October*, 19—.

(Seal)

JOHN DOE

The foregoing instrument, consisting of one (1) page besides this, was, at the date hereof, by said *John Doe*, signed, sealed and published as and declared to be his last will and testament, in the presence of us, who at his request and in his presence and in the presence of each other, have signed our names as witnesses hereto.

WITNESS

Residing at 101 *St. Alban's Way*,

WITNESS

Residing at 84 *Fulton Street*,

FORM 65

AGREEMENT TO SETTLE ESTATE OUT OF COURT

This agreement entered into by and between *Jane Doe*, *Thomas Doe*, and *Robert Doe*, witnesseth:

That whereas *Henry Doe*, late of *Miami County, Florida*, departed this

life on the 1 day of *May*, 19—, intestate, and the owner of real and personal property in *Miami* county, state of *Florida*. He left as his sole and only heirs *Jane Doe*, his widow, and *Thomas Doe* and *Robert Doe*, his grandchildren, all over twenty-one (21) years of age.

Now, therefore the said heirs desiring to settle the said estate out of court and avoid administration on the same, hereby make the following family settlement of said estate as follows, to wit:

The said *Thomas Doe* and *Robert Doe* hereby transfer and convey to *Jane Doe*, widow of deceased, all their right, title and interest in and to all the personal property belonging to said estate of every kind whatsoever, including money and choses in action.

The said *Jane Doe*, widow, hereby agrees in consideration of said personal property to convey to *Thomas Doe* and *Robert Doe*, heirs, by quit-claim deed, all her right, title and interest in and to the following described real estate in *Miami* county, *Florida*, to wit:

House, Including All Its Contents, Located at 4004 Boakman Ave. in Said County and State.

It is understood that this agreement is evidence of the full family settlement as between said parties, and the parties hereto agree to abide by this agreement, and hereby waive all our rights under the law.

The said *Jane Doe*, widow, hereby agrees to pay all undertakers' and physicians' claims, and other claims, if any.

In Witness Whereof, we have hereunto set our hands and seals this 10 day of *Oct.*, 19—.

(Seal) _____
JANE DOE

(Seal) _____
THOMAS DOE

(Seal) _____
ROBERT DOE

State of _____,)
County of _____,) ss.

Before me, *John Brown*, a notary public in and for said county and state aforesaid, personally appeared *Jane Doe*, *Thomas Doe*, and *Robert Doe*, who acknowledged the execution of the annexed and foregoing agreement to be their voluntary act and deed.

NOTARY PUBLIC

My commission expires 10 day of *Jan.*, 19—.

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